



## II

### THE COMMONWEALTH OF AUSTRALIA

#### § 1. *The History of Federation*

ANXIETY at the growing power of the United States and the perturbation of the Imperial Government over the failure of Canada to pass the Militia Act suggested in 1862, unquestionably contributed in considerable degree to induce the Colonial politicians to form, and the Imperial Government to support, the idea of a federation of the Canadian territories. It was different in Australia; if the Crimean war and rumours of Russian hostility to Britain and intrigue in Afghanistan in 1877-8 and 1885 aroused some anxiety in Australia, it was but faint and the effect was evanescent. Indeed the first result of federation was a prompt decrease in the numbers and efficiency of the defence forces of the Commonwealth. The speed with which federation was consummated in Canada was due to the pressure of the situation of the time with possibilities of Fenian intrigues and anxiety lest adventurers from the United States might cut off Canada from the west. In Australia, where defence formed no driving force, federation was the slow outcome of the most lengthy deliberation.<sup>1</sup>

The dominant motive for federation lay in trade and customs. As early as 1842 New South Wales was ready to give Tasmania and New Zealand free trade, but the Imperial Government, on 28 June 1843, disapproved of differential duties. Sir C. Fitzroy, on 29 September 1846, suggested that there should be a Governor-General for Australia to consider Acts on trade issues, and Lord Grey, with the approval of the Privy Council Committee on Trade and Plantations, approved in 1849 the proposal, and in the Act to constitute the Colony of Victoria in 1850 it was proposed to provide for a federal legislature with power to enact a tariff and to deal with posts; roads and railways; shipping and harbours; weights and measures; and matters referred to it by the Colonies; to create a Supreme Court; and raise

<sup>1</sup> Quick and Garran, *Const. of Commonwealth*, pp. 79-252; Harrison Moore, *Commonwealth of Australia*; Egerton, *Federations and Unions*.





ment to secure for the Colonies the position of neutral states, an idea which was derided in the Colony and still more outside of it, and made no further progress. But anxiety regarding the French penetration of the Pacific, stirred by fears of the results of the deportation of convicts to New Caledonia from 1864, continued when transportation to Western Australia ceased in 1867, resulted in pressure on the Imperial Government to annex Fiji in 1874 and to assert in 1878 British interests in the New Hebrides. The interest of the United States in Samoa began in 1875, and in 1880-1 a Conference at Melbourne and later at Sydney<sup>1</sup> showed that federal ideas were stirring, though Victoria,<sup>2</sup> Queensland, and New Zealand were not willing to accept any Federal Council. The appearance of German claims in the Pacific and anxiety over New Guinea produced more striking results. Queensland purported to annex New Guinea so far as not already in the hands of the Dutch, but the action was disavowed by the Imperial Government, which, however, pointedly hinted at federation as a proper preliminary to the fulfilment of Australian ambitions to take a more active part in the control of the Pacific. Mr. Service, Premier of Victoria, then secured the meeting of a Conference at Sydney in November 1883 at which federation was discussed. New Zealand and Fiji were represented as well as the six Colonies, and the Conference agreed on pressing for annexation of New Guinea, control of the New Hebrides, protested against the introduction of convict labour into the Pacific, and demanded a Monroe doctrine for Australia. It concurred in securing an Imperial Act to create a Federal Council with powers of a definitely limited kind, and on addresses from the Colonies other than New Zealand and New South Wales—Sir H. Parkes had become convinced that such a Council would be a 'rickety body'—the desired Council was created by Imperial Act of 1885.<sup>3</sup> Mr. James Bryce opposed it in the Commons, Lord Carnarvon championed it in the Lords. The powers of the Council were to legislate on the relations of Australasia with the islands of the Pacific; the influx of criminals; fisheries in Australasian waters beyond territorial limits; intercolonial service of process, enforcement of judgements and criminal process;

<sup>1</sup> New South Wales, *Ass. Votes*, 1881, i. 329.

<sup>2</sup> Victoria, *Votes*, 1880-1, iv. 459.

<sup>3</sup> 48 & 49 Viet. c. 60.

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request of Victoria and Queensland, for recognition *inter se* of naturalization certificates,<sup>1</sup> and of all four Colonies for the compulsory production of testamentary instruments. Its last meeting was in January 1899 at a time when federation was at hand. It interposed no difficulty in the way of federation, and, on the whole, its existence rather told in favour of the fuller measure than otherwise.

True federation was at the same time being brought nearer by considerations of the need for uniformity and co-operation in many matters, which formed the subject of intercolonial conferences of ministers or experts, and whose necessity inevitably gave advocates of change a theme for argument. Sir W. Jervois's inspection of Australian defences in 1878 led to recommendations for further defence arrangements, and the Sydney Conference of 1881 admitted that Australia really ought to undertake her military defence, while holding that naval defence ought to be an Imperial burden; this conclusion Lord Carnarvon's Royal Commission on defence emphatically dissented from on 23 March 1882. Admiral Sir G. Tryon was fortunate in his negotiations in 1885 with Australia, and paved the way for the agreement, at the Colonial Conference in London of 1887, that Australia should accept the duty of finding £226,000 towards the cost of a naval squadron, to be maintained definitely under agreement on the Australian station. A military officer was to be sent to inspect Australian defence by the Imperial Government. Sir H. Parkes, however, withdrew from this arrangement, with the result that in 1889 the Imperial Government dispatched Major-General Sir J. Bevan Edwards to report on the situation. He did so on 9 October, advocating federation for defence purposes, and Sir H. Parkes became a convert to the idea of federation. Under his influence a meeting of accredited delegates was held in Melbourne in February 1890 to pave the way for a formal conference, which was duly held at Sydney in March–April 1891. The Colonies, other than New Zealand, which sent three representatives, were represented by seven spokesmen apiece, usually two from the Council, appointed under Acts of 1890–1. It was agreed that federation for customs and defence was desirable; that only so much power should be given to the federation as was essential; that the

<sup>1</sup> 60 Vict. No. 1.

## PREFACE TO THE SECOND EDITION.

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My thanks are due to the legal profession for the warm welcome they have accorded to the first edition of this publication.

The author is happy to note that the Introduction which dealt with the manifold defects of the Act and set out constructive proposals for amendments has served its purpose and that there are indications that the remodelling of the Act will be taken on hand without further delay.

Several improvements are effected in this edition, the Introduction is made fuller and more comprehensive, portions of the commentaries are rewritten, condensed or elaborated as was found expedient; the case law is brought up to date and several topographical changes are made to make the book more handy and facilitate reference.

The author is grateful to the Hon'ble Mr. Justice Waller, for the deep interest evinced by him in all matters relating to court-fees which has been a source of great encouragement to the author in his attempts to solve several of the knotty questions that arise under the Act.

Thanks are again due to Mr. Verghese, Chief Court-Fee Examiner, High Court, (now District Munsif) whose practical knowledge in the working of the Act in the mofussil especially in the Andhra and Malabar districts has been of great help to the author, and to the publishers Messrs. V. S. N. Chari & Co. for their characteristic enthusiasm in doing the work entrusted to them with thoroughness and promptitude.

High Court Buildings,  
Madras.  
30 April 1932.

R. SATYAMURTI AIYAR.

66,228 ; the Labour party there disliked the refusal to use the referendum to settle deadlocks ; there was dislike of equal representation in the Senate, to the financial advantages which would accrue to Tasmania and Western Australia at the expense of the Colony, and to the certainty of a protective tariff. But Mr. G. Reid was not prepared to defeat federation against the popular will, and he used the situation to secure concessions for New South Wales, after obtaining approval of his policy from the electors at a keenly disputed election in 1898. On 29 January a Premiers' Conference at Melbourne conceded changes in the draft ; these included the provision of an absolute majority in lieu of a two-thirds majority at a joint session consequent on a deadlock ; the limitation of the provisions of the constitution regarding the payment to the States of the surplus customs revenue to ten years ; the giving of permission to Parliament to make grants to necessitous States ; the safeguarding of the States by requiring the sanction of the electors to changes in their boundaries ; and the application of the deadlock clauses to cases of amendment of the constitution. It was now found possible to muster 107,420 to 82,741 votes, and Queensland was moved to take a referendum resulting in a decided victory, though Rockhampton and the south opposed the change. The five Colonies now addressed the Crown for an Imperial Act and sent delegates to press their cause,<sup>1</sup> while New Zealand, which had stood out since 1891, and Western Australia sent memoranda asking for permission to join in future, and in the latter case for customs concessions and an intercolonial railway, as in Canada. New Zealand suggested that, if she did not join, there might be provision for her to share the High Court, and to arrange joint military and naval defence. The delegates who conferred with Mr. Chamberlain had to admit that the Commonwealth was a Colony ; and the demand for wide powers in s. 5 of the proposed Act, to which the constitution was to be attached, giving effect to Common-

<sup>1</sup> *Commonwealth of Australia Constitution Bill* (1900) ; Clark, *Australian Const. Law*, pp. 335-57 ; *Parl. Pap.*, C. 6025, 6466 ; Cd. 124, 158, 188. The Adelaide, Sydney, and Melbourne Debates are all printed. For Deakin's share in winning public opinion, see Murdoch, pp. 151 ff., 180 ff. For the agitation on the gold fields which forced Western Australia to come in, see Battye, *Western Australia*, pp. 448 ff.

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§ 2. *The Commonwealth and the States*

There is a certain distinction between the frame of the Commonwealth constitution and that of Canada. In the latter, though its character is truly federal, the fact that the residual power was to be given to the Dominion resulted in a different measure of importance being attached to the definition of functions of the federation and the provinces, and the powers of each are accordingly set out in detail. In the case of the Commonwealth the Act emphasizes in its form the fact that the States were uniting to form a new entity with powers in some matters exclusive of those of the States, in others covering the same ground, but paramount in case of conflict, but in many other spheres not infringing State sovereignty. The whole stress of the Act lies in the creation of a Federal Parliament (section i), of a federal executive (ii), a judicature (iii), in the laying down of rules as to finance and trade (iv), while only a short section (v) is given to the States, and the creation of new States is regulated (vi), the seat of Government and the appointment of deputies are provided for (vii), and the mode of altering the constitution defined (viii). The essential position regarding the States is their continuance in existence with their old constitutions—the possibility of change was discussed during the federation debates; but the opposition was conclusive—whereas in the case of Canada the subordination of the Lieutenant-Governors to the Governor-General, and the federal power of disallowance, mark immediately a predominance on the part of the federation. So also the distribution of powers in Canada was based on the predilection of many of the framers of the constitution for a unitary form of régime, while, in the Commonwealth, the insistence on defining only the powers of the Commonwealth, leaving all else to the States, and on providing a High Court with almost exclusive power of settling disputes between the Commonwealth and the States, testifies to the great weight of American precedent<sup>1</sup> on the formation of the constitution. It might *a priori* have been expected that American precedent would more strongly have affected the

<sup>1</sup> Clark, *Australian Const. Law*, pp. 358-87. Note that South African opinion felt that Canadian federalism is too rigid in its legalism, and that federation perpetuated nationalism; Walker, *Lord de Villiers*, pp. 434 f.



The Court-Fees Act dating from 1870 has been the target of such adverse criticism that it will be more like flogging a dead horse to direct further criticism against it and catalogue its manifold defects. But one pauses to enquire whether after all, it has not outlived its usefulness, and seamed and scarred as it is with amendments and repeals, it would not be expedient to scrap it altogether, and enact a brand new Act in the light of experience gained by the working of this fiscal enactment for the past several decades. The irony of it is, however, that in spite of all this, the legislature has not, for reasons not at all apparent yet made up its mind to effect this necessary reform which is certainly overdue. The Government of India more than a decade did prepare a draft bill for a new Court-Fees Act and nothing came out of it afterwards.

The obscure and inartistic drafting of the Act, its obsolete provisions, its antique procedure and its ambiguous expressions have all been severely criticised by the learned Judges of the several High Courts and have also been commented on in this book. In *Balkaran Rai v. Gobind Nath Tiwari*, 12 A. 129, for instance Mahomud J. has forcibly expressed his view thus : " I think it is within my province to point out clearly as a judge of this court that I do not understand that the provisions of the Court-Fees Act as they now have been interpreted can operate otherwise than to retard, and in many cases obviate the possibilities of justice being done to the parties who did not happen to have sufficient pecuniary means to abide by the stringent requirements of the letter of the statute itself. The enactment as the learned Chief Justice has explained is most anxious to collect money from those who seek to obtain justice but there is not one word in that statute to enable the litigant who is to be subject to these stringent rules, to reobtain the sum of money which he, by a wrongful user of the powers given to the taxing officer does pay as court-fee. \* \* \* I mention this on purpose as I hope that this enactment will soon be considered fit to be amended and that a difficulty such as has risen in this case may not arise in future and that no pleas of *ad miseri cordium* such as were addressed in this very case might be made the subject of consideration of the judges of a whole High Court established by Her Majesty's Charter. The stringency of the Act as it has now been interpreted is probably a good thing for the litigant, because it indicates the necessity of amendment on his behalf. I hold, following the views of Jeremy Bentham, that law taxes, the more stringent they are, the less do they achieve their aim, for they are stringent not in the

of the State Parliament acting together is permitted, but merely to fill casual vacancies,<sup>1</sup> and even then only until the next general election of the House of Representatives or of Senators.

The principle of population, on the other hand, as in Canada, dominates the Lower House, where, under the growth of the comparative populations, New South Wales has now 28 members, Victoria 20, and Queensland 10, as against the original 26, 23, and 9, while Western Australia and Tasmania remain at 5, the minimum figure, and South Australia at 7, the Northern Territory being given a member without voting power. In calculating population, there are omitted aborigines and members of races excluded from the franchise for the Lower House in the State; this rule strikes at Western Australia and Queensland, which since 1907 (Act No. 22) and 1905 (Act No. 1) have disfranchised Asiatics as well as aborigines.

The Federation may be looked upon from two points of view, a matter which was never possible in the case of Canada, so clearly predominant was the position of the Federal Government, with its sole right of correspondence with the Imperial Government, and its apparent control over the provinces. It might be argued, as many State politicians held, that all that had happened was the creation of a new agency by the States, which was to serve as their representative in certain defined matters. The view of the Commonwealth Government, as accepted and developed by the Imperial Government at and after federation, was that the change was not the mere addition of a new entity to existing bodies; it was the creation of a whole, which embraced the parts and in the process altered and changed their nature. To the outside world, in foreign affairs and in Imperial relations alike, the Commonwealth was to stand for and speak for Australia. The truth, as usual, lay between these extremes, but it is wholly impossible yet to say how the course of judicial interpretation will ultimately lead, for the High Court, as will be seen, does not feel bound to respect its own previous decisions, and changes in personnel may at any time deflect the course of interpretation of the constitution.

The constitution itself gives little direct guidance. It pro-

<sup>1</sup> See *Vardon v. O'Loghlin*, 5 C. L. R. 201; *Parl. Deb.*, 1907, pp. 4393 ff.; *Parl. Pap.*, 1907-8, Nos. 111, 112.

on the other. A most common instance is the use of the word "value" and though within the four corners of the Act there are at least three different methods of computation, the expression is used very loosely without specifying how it is intended to be ascertained in individual cases. As has been observed by their Lordships of the Allahabad High Court in 44 A. 542, "The legislature did not intend to say, and has not said anything as to how the valuation should be arrived at".<sup>1</sup> Again there is no definition of what a "garden" is, and this has given rise to a conflict of decisions as to what a Malabar Paramba is. Nor is there any method laid down for the valuation of the title deeds of immoveable property. Then in s. 17 there is no specification of what a "subject" is.<sup>2</sup> And regarding the use of the words "summary decision" in Sch. II, Art. 17, Westrop, C. J. observes in 2 B. L. R. 235, "The meaning of the words 'summary decision' is not sufficiently well known to justify the use of them as a technical term in an Act of the Legislature without any definition." As observed in *Krishna Mohan v. Raghunandan*, 4 Pat. 336, "the wording of this Act is in some respects certainly unscientific and difficult to interpret and its interpretations has been the subject of a multitude of decisions in the courts." There are several such instances in the whole Act that justifies the remark of the learned judges of the Bombay High Court in 4 Bom. 515 that the "Court-Fees Act might be advantageously amended with a view to the attainment of a higher degree of perspicuity than it now possesses"; and this is evident also from the observations in 2 Bom. 219.

Another defect noticeable in the Act is that while it provides for certain classes of suits, its provisions are seldom exhaustive. For instance s. 7 (ii) provides for 'suits for maintenance' but does not provide for 'suits to reduce maintenance.' As was observed by their Lordships of the Bombay High Court in 4 B. 515, 'it is remarkable that although in Cl. (iii) of s. 7 the Legislature expressly provided for 'suits to raise attachments from land' it has not made any express provision for 'suits to restore attachments on land', which might fairly have been expected to be placed on the same level in respect of court-fees as suits to raise such attachments. Whether the mode of computation as laid down in clause (viii) would be fair in either of those cases is open to question". The Act contains no rules and prescribes no method of arriving at the amount or value of the subject-matter of

1. For a fuller discussion see p. 600 *infra*.

2. This has been rectified in Bengal by the Bengal Amendment Act VII of 1935.

Empire, but it is difficult to hold that there is any common law of elections in the Commonwealth, as was contended in *Chanter v. Blackwood*.<sup>1</sup>

Adopting this construction of Acts by English models, the High Court has on several occasions investigated the position of the Crown in the States as against the Crown in the Commonwealth. The clear rule is that a statute is normally intended to govern the actions of subjects, and, therefore, does not normally admit of interpretation, without express words, as meant to bind the Crown. In the case of the Commonwealth Constitution, however, the purpose of the Act being the distribution of legislative, executive, and judicial authority, the provisions of the Act bind the Crown by necessary implication. This is clear, but the question remains how far a Commonwealth Act may be assumed to bind the Crown when the Crown is not specifically mentioned therein. The issue arose in a concrete form in *The King v. Sutton*,<sup>2</sup> and *Attorney-General of New South Wales v. Collector of Customs*,<sup>3</sup> where the Government of New South Wales asserted that, as representing the Crown, it was entitled to bring in wire netting for its Government sale to farmers, free of duty and exempt from any interference by the customs authorities, on the score that the Commonwealth was forbidden by s. 114 to tax the property of a State, and that the *Customs Act*, 1901, did not apply to the Crown, and, therefore, gave no authority to agents of the Commonwealth to detain property of the Crown, dutiable or otherwise. The High Court ruled that the constitution was binding on the Crown in the States, that it gave to the Commonwealth, by ss. 52 (2), 86 and 90, sole control in all customs matters; and that in matters thus given wholly to the Commonwealth its legislation must be deemed to apply to the peoples and the States impartially, without any reservation for the Crown in the States, which was not, as regards customs matters, the Crown at all. The Crown was no doubt one and indivisible, 'but its power is not one and indivisible';<sup>4</sup> it acts by varying agents with varying authority in different localities, or for different purposes in the same

<sup>1</sup> 1 C. L. R. 129.

<sup>2</sup> (1907) 5 C. L. R. 789. What constitutes importation is discussed in *Canada Sugar Refinery Co. v. The Queen*, [1898] A. C. 735.

<sup>3</sup> (1907) 5 C. L. R. 818.

<sup>4</sup> Isaacs J., 5 C. L. R., at p. 809.

Another regrettable matter is that the Act has not kept pace with other enactments as for instance, the Code of Civil Procedure. When the Code of 1908 made sweeping changes in processual law, the Court-Fees Act which when it was drafted, was in accord with the then prevailing law, has stagnated and it was not amended to bring it in a line with the later statutes. The result is that several of its sections are either archaic or unworkable. A glaring example of this anachronism is noticeable in s. 11 which relates to the postponement of an enquiry for the ascertainment of mesne profits in execution proceedings. This is opposed to the scheme of O. 20, r. 12 of the Code of Civil Procedure (*Vide* Commentaries under s. 12 of the Act for a critical discussion of this topic). A similar difficulty is experienced in s. 7 (*iv*) which provides that the plaintiff in a suit for accounts shall state the amount at which he values the relief he claims. This obviously implies that the plaintiff is at liberty to give any arbitrary valuation which may or may not be an approximate value which the Code of Civil Procedure requires the plaintiff to give. The whole trouble has arisen to quote the words of Sulaiman J. in 47 A. 756 "from the circumstance that the amendments of the Court-Fees Act have not kept pace with the amendments of the Code" or as their Lordships of the High Court of Lahore put it, "It is a bit unfortunate that there should be any difference in language in the two enactments in respect of a particular suit. The reason for this divergence is apparently due to the fact that the Court-Fees Act having been enacted long prior to the present Code of 1908, *no attempt has been made to keep the former Act properly amended and to accord with the provisions of the Civil Procedure Code*". Yet another example is found in s. 10 of the Act which provides for the dismissal of the suit for non-payment of proper court-fee when the provision in O. 7, r. 11, Civil Procedure Code is different and the procedure therein laid down is to reject the plaint. Rejection of a plaint and dismissal of a suit are two totally different things with different legal incidents and this want of harmony between the Code and this Act is quite unfortunate. Still another example is found in Sch. II, Art. 17 (*v*) *viz.*, a suit to set aside an adoption. The expression was borrowed from the Indian Limitation Act, 1859, and though the latter Act has been re-enacted twice later, in 1877 and 1908, yet the Court-Fees Act continues to remain as it was, and the good old expression is perpetuated. While the whole statute law of the land has been amended, repealed, or re-enacted and kept up to date, the Court-Fees

by any law within the granted authority of the Parliament, depends on the indication which the law gives of intention to bind the Crown.

This is to all appearance sound law; what it means is that within the ambit of its authority, any Colonial Legislature can bind the Crown in any of its aspects: a provincial Act in Canada can take away the priority of Imperial or Dominion or provincial claims on a bank in the province. Nor is there anything inconsistent in the other decided cases. In *Roberts v. Ahern*<sup>1</sup> what was decided was that under the Victorian *Police Offences Act*, 1890, the Crown in its colonial capacity was not bound, and so the Crown in the Commonwealth would not be bound. So in *The Commonwealth v. State of New South Wales*<sup>2</sup> it was ruled that a memorandum of transfer to the Commonwealth of land acquired for public purposes need not be stamped under the New South Wales *Stamp Duty Act*, 1898, inasmuch as the Act was not intended to bind the Crown when it was passed, and so would not apply to the Crown in the Commonwealth. But the further suggestion there made, that the Act, if it had been extended to the Crown in the Commonwealth, would not have been valid, must be regarded as merely an *obiter dictum*, and overruled by the later decision in the *Engineers*'<sup>3</sup> case. The narrower view adopted there is in harmony with the decision in *Broken Hill Associated Smelters Proprietary Ltd. v. Collector of Imposts for Victoria*<sup>4</sup> when it was ruled that the Victorian *Stamps Act*, 1915, did not apply to contracts for marine insurance effected in England with the British Government, the Crown not being expressly mentioned in the Act. Nor is there any ultimate disagreement between this view—though there is some of emphasis—and that expressed in *Municipal Council of Sydney v. The Commonwealth*,<sup>5</sup> when stress was laid on the different aspects of the Crown as constituting distinct juristic persons.

In order to emphasize the aspect of the Commonwealth as presenting Australia as a unit in Imperial relations, it was proposed in the draft constitution of 1891 definitely to provide that the Governor-General should be the channel through which all communications should pass from the Governors of the States

<sup>1</sup> (1903) 1 C. L. R. 406.

<sup>2</sup> (1906) 3 C. L. R. 807.

<sup>3</sup> 28 C. L. R. 129; 36 C. L. R. 170.

<sup>4</sup> (1918) 25 C. L. R. 61.

<sup>5</sup> (1904) 1 C. L. R. 208. Cf. *Gauthier v. The King* 56 S. C. R. 176.

to issue a notification reducing the fee payable in Second Appeals from decrees of Revenue Courts and it has led to the curious result that the Government set about to *reduce* the fee to Rs. 15 when the Article itself provided only for a fee of Rs. 10 in the case of appeals. Again an anomaly was created by the non-inclusion of the words "memorandum of appearance" along with the vakalatnamas and muktarnamas in Art. 10, Sch. II. This had to be rectified by notifications. And these by no means are perfect either. There is again a confusion in the case of the court-fee payable in 'small cause suit' and 'suits of a small cause nature' but tried as original suits. The Government of Madras have admitted that the Sch. II, Art. 2 gave relief to cases not intended to be relieved against. While the wording of the Article gives relief where it is not intended, it denies where it is intended. The omission of the words 'Memorandum of appeal' in Article 2 (Madras) makes it inapplicable to appeals. Does the legislature think that a lower court-fee should be paid only in *suits* of a nature cognizable by Courts of Small Causes and not in *appeals* therefrom? Does the nature of a suit change in appeal? Obviously not. Then why this omission?<sup>1</sup> There are several instances of such anomalies. These are referred to just to emphasise the fact that with an Act vague in expression and inartistically drafted, the several local amendments of the Central and Provincial legislatures, and the long string of Reductions and Remissions one will not be over-drawing the picture if one observes, that the whole is a bewildering maze, which to borrow the expression of one of the learned judges of the High Court of Madras used in some other connection "resembles a mosaic of broken tea-cups."

If one simply runs through the provisions of the Act its defects become palpable. They are all set out *in extenso* in the body of this book. Section 3 is condemned as "a most clumsily worded section." "So far as its language goes it does not profess to prescribe a court-fee; but by implication it prescribes a court-fee in certain cases. It is clearly an instance of bad drafting." (*Abdul Hakim v. Chattanada Iyer*, A. I. R. 1931 M. 457).<sup>2</sup> The wording of section 4 is unfortunate (Per Miller J. in 4 *Pat.* 336 at 349). The heading of Chapter III is incorrect. The difference in the language used in sections 4 and 6,

1. For a fuller discussion see pp. 453-4.

2. Again the section seems to imply payment of dues to the officers or clerks of courts and courts are driven to the necessity of putting a gloss over it and construing the section to mean only the court-fee paid to the crown. 45 M. 849.

Commonwealth to legislate to secure observation of Imperial treaties, and the punishment of officials who violated such treaties, still, no such legislation had been passed. Nor did the fact that the High Court was granted original jurisdiction in matters arising under any treaty, or affecting consuls, give that Court exclusive powers for the time being, the State Courts still retaining jurisdiction pending federal legislation. In the circumstances, as South Australia alone could act, it would be improper to bring in the Commonwealth at all. The Commonwealth, on the other hand, insisted on its legislative, and therefore executive, authority regarding external affairs, trade and commerce with foreign countries, and navigation and shipping.<sup>1</sup>

Mr. Chamberlain's views of 25 November 1902,<sup>2</sup> were marked by the wide view he took of the nature of the Commonwealth, as created to represent Australia for the purpose of external affairs, the question of how an obligation of the Commonwealth was to be made effective locally, being really separable from and not to be confused with the essential fact that the obligation was that of Australia. He insisted that it was not relevant to the issue to argue that the powers were merely in the hands of the State; responsibility towards every foreign nation rested immediately and ultimately with the Imperial Government, but the means of carrying out these obligations lay in the hands of many officials, Dominion or provincial, Commonwealth or State, over whom the Imperial Government had no direct control, and who could be dealt with, if they failed in duty, only by their own Governments. This delegation was made possible merely by the doctrine that obligations were accepted as binding by all parts of the Empire equally. It did not alter the fact that the immediate responsibility as regards the carrying out of the treaty obligations of the Australian people rested with the Commonwealth, as followed essentially from the intention of the constitution to create a single federal Commonwealth. The Federal Government, in a minute of the Attorney-General of 12 November 1902, and a dispatch of the Prime Minister of 21 November<sup>3</sup> energetically supported the same view, but the Acting Premier of the State, on 13 February 1903,<sup>4</sup> made a spirited and effective reply. Mr. Chamberlain on 15 April<sup>5</sup>

<sup>1</sup> *Ibid.*, pp. 10, 11.

<sup>2</sup> *Ibid.*, pp. 15-22.

<sup>4</sup> *Ibid.*, pp. 23-5.

<sup>2</sup> *Ibid.*, pp. 12-15.

<sup>5</sup> *Ibid.*, p. 25.



amended provision in the Code of Civil Procedure, O. 41, R. 23. Section 14 encourages in some cases an idle formality. Section 15 para 2 does not agree with provision in the Code of Civil Procedure. Section 16 is a gap. The wording of section 17 is vague without a definition of the word "subject."<sup>3</sup> Section 19 abounds with unnecessary provisions, *vide* clauses 1, 3 and 8. Sections 19-A to 19-K have been wedged into the Act. They are found in Chapter III-A. The sections were introduced partly in 1875 and partly in 1899 and the two parts have not been properly co-ordinated. The point is not clear beyond doubt whether the fee levied for issue of Probates or Letters of Administration is court-fee or a tax. It appears to partake of the incidents of both. Unlike court-fee there is a minimum value fixed which is exempt from duty, it could be collected after the termination of proceedings and a penalty could be levied for payment of deficit duty and the same could be realised by the revenue authorities as revenue. Still the provisions are embodied in the Court-Fees Act<sup>4</sup>. In certain cases probates of wills extend to the whole of British India and difficulties are now experienced which arise from the different rates of fee available in the several Provinces. The want of a coherent plan will also be evident from this single fact that the rule making provisions are scattered over seven sections in four different chapters namely Sections 19-F, 20, 21, 22, 23, 27 and 34. Similar remarks apply to sundry Articles in the Schedules. Verily this is a dismal picture of the Act.

When in a suit on a promissory note for Rs. 1,000 for instance, the plaintiff has to pay *ad valorem* fee of about Rs. 120 while a person seeking to recover immoveable property *e. g.* land assessed to revenue of the same market-value and a declaration of his title thereto necessitating a decision on sundry questions of the law of real property and the personal law of the parties, has to pay the nominal fee of about Rs. 11 or 12 calculated on 10 times the annual revenue, where a poor widow seeking maintenance at the rate of Rs. 10 per mensem has to pay a court-fee about of Rs. 12, while the scion of a Zamindar's family filing a suit for a declaration that the alienations made by the zamindar are not valid or binding and that he is entitled to succeed to the zamindary, has to pay a fee for declaration, *vis.*,

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1. See page 309.

2. See p. 315.

3. See p. 321 for a discussion of this topic.

4. For a full discussion thereof see pp. 387 and 388 *infra*.

realized its position, and by tactful dealings evaded pressing the matter to a really grave issue.

The Imperial Government was, of course, unable to enforce directly acceptance of Mr. Chamberlain's dicta, but it did its best to secure obedience. Thus, when the Queensland Government with every justification asked for representations to be made to the United States Government, regarding the ill treatment of a British subject from Queensland, Mr. Benjamin, at San Francisco, the Secretary of State insisted on referring the matter to the Commonwealth Government for its endorsement, on the same principle that it must be the Commonwealth which acted in any case of relations with foreign powers.<sup>1</sup> Similarly, when the New South Wales Government asked that steps be taken to secure redress for Mr. Weigall's wrongs in Manchuria, the Commonwealth was brought into the matter by the Secretary of State. But the States could not be ignored in their turn, when it came to the question of matters such as the landing of foreign sailors from warships. Doubtless the Commonwealth had a clear *locus standi* as the authority to deal with defence as well as foreign affairs, but the States claimed their full police power, and the matter was arranged by mutual accommodation and not Commonwealth dictation at the Brisbane Conference of 1907, while subsequent modifications made were distinctly in favour of State authority.<sup>2</sup>

From a more domestic point of view the matter was made a subject of dispute in regard to invitations to the Colonial Conference of 1907. No invitations had been sent to the Conference of 1902 to the States, and even invitations to the Coronation had been sent through the Governor-General, a most improper step, resulting in the dignified and proper refusal of the Premiers to attend.<sup>3</sup> When it was apparent that invitations to the Conference of 1907<sup>4</sup> were not to be issued, representations were made by South Australia and by New South Wales on behalf of the other States. The argument of South Australia was

<sup>1</sup> Cf. the discussion at the Premiers' Conference at Brisbane in 1907; *Victoria Parl. Pap.*, 1907, No. 23, pp. 37-47.

<sup>2</sup> *Ibid.*, pp. 271 ff.; *Commonwealth Stat. Rules*, No. 31 of 1909; No. 29 of 1910; No. 29 of 1911.

<sup>3</sup> *Daily Chronicle*, 25 Jan. 1902. In 1910 the invitations went through the Governors.

<sup>4</sup> *Parl. Pap.*, Cd. 3337, 3340, 3524, pp. 92-4.

be commensurate with the time and trouble taken by the court. That is the principle on which sitting fees for the days of the hearing of a suit are collected on the original side of the High Court. But there is no provision for that, in the Act. Or, is the fee only designed to discourage speculative litigation by placing certain obstacles in the way of intending suitors, by making it a costly luxury not to be lightly indulged in? If so, has the object been achieved? It is apprehended not. In the Court Fees Act there are provisions relating to the fee to be collected in testamentary cases as Probate, Letters of Administration, etc. Is the duty tax or court-fee? Courts have held that to be court-fee.<sup>1</sup> But has it the incidents of court fee? There is a minimum valuation which is exempt from the fee. Is there such a minimum in the case of court-fee? No. In the case of Probate duty courts have no jurisdiction to question the adequacy of the fee unless the revenue authorities move in the matter. Unlike court-fee there is a penalty leviable for payment of deficit probate duty. In this respect it has the attributes of stamp duty. The utmost sanction for non-payment of adequate court-fee is the dismissal of the case but in the case of inadequate payment of stamp duty or probate duty, a penalty is levied whether the party elects to continue the proceedings or otherwise. Further, no court-fee could be collected after the termination of the proceedings<sup>2</sup> but probate duty is collectable long after the proceedings end. In spite of all these radical and fundamental differences between probate duty and court-fee, provision relating to these are embodied in the Court-Fees Act as if they are homogenous matters.

One of the results of the want of a clear conception of these matters is the difficulty in ascertaining who are the parties who are really interested in a court-fee question. Is it the Government, where finances may be affected by an adverse decision or is it the defendant who in the guise of safeguarding the revenue may be anxious to make the plaintiff or appellant pay a higher court-fee? Decisions are not uniform and it is regretted in some cases irreconcilable, so that it is hardly possible to extract any principle therefrom that will solve this vexed question. If the Government is deemed to be the only party interested in this issue, does it get notice about it in the trial court as in the case of applications to sue *in forma pauperis*? Not in all

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1. See 52 C. 875 at p. 878.

2. A new innovation is found in the Bengal Court Fees Amendment Act which provides for collection of deficit court-fee *after* the termination of proceedings as arrears of tax.

ultimately to be the case—that force of circumstances would dictate to the Commonwealth and the States some system of co-operation in regard to this issue. The matter was rendered more effectively under control by the use of the Commonwealth Government as an intermediary in respect of the new loan policy of £34,000,000 in 1925-6. The suspicions aroused, however, by the failure to invite the States to the Conference of 1907 are clearly shown by the fact that the decision of the Secretary of State to create a Conference Secretariat—of the most shadowy kind—in the Colonial Office elicited from New South Wales an attack on the score of some fancied intention to interfere in the self-government of the States. The disclaimer given was so categorical and emphatic as to dismiss that fear.

While it is possible for the Imperial Government to insist on referring to the Commonwealth Government matters arising in the States which may affect the Commonwealth, it is clearly impossible to forbid the Governor of a State forwarding direct to the Secretary of State the views of ministers on any issue of a federal kind,<sup>1</sup> and it is only through the personal control which the Secretary of State has over Governors that he can be made to send copies of his dispatches to the Governor-General for his personal information, and that of his ministers, if in his opinion the matters at issue are of federal interest. Copies of the Secretary of State's dispatches can, of course, be sent to the Governor-General at his discretion, but the matter is obviously one in which tact must be exercised, and the Secretary of State has the simple remedy, in any instance in which he deems that a State dispatch should be communicated to the Governor-General, of telegraphing instructions that this should be done, though of course this cannot be applied to confidential communications without the assent of ministers.

The question of honours has in this regard presented serious difficulties, as the claim was early made that the recommendations made by ministers or the Prime Minister—as is usually the form adopted, though the honour may be the outcome of a

<sup>1</sup> The protests of the Premier of Victoria on 24 Nov. 1926 against an alleged decision of the Imperial Conference of 1926 to cut off direct communications with the Imperial Government was a complete misunderstanding; Part VIII, chap. iii, § 8.

case of the suits catalogued therein, one is merely referred to that Act. The other section is s. 11 coming under a Part curiously labelled "Supplementary Provisions"—though there is precious little to supplement—and is the only one that can be stated to be a really useful section and that specifies when objections as to valuation could be taken and what is the effect of an over or under valuation. Can it be doubted then for a moment that the rules regarding the valuation of suits are in a nebulous state? As the members of the select committee which considered the Court-Fees Bill in 1924 remarked it is generally admitted that land suits are undervalued and disposed of by Courts not strictly competent to try them. Cases are not wanting where the provisions of the Suits Valuation Act, as they at present are, sometimes lead to the startling result that a higher claim is sometimes tried by an inferior tribunal while a lesser claim goes before a superior tribunal. (*Vide 50 M. 646*). This finds a counter part only in the Court-Fees Act where a smaller claim is liable to a higher fee and *vice versa* (*vide 8 L. W. 88*). The question naturally arises therefore, why, if the Legislature expected as early as 1887, that rules will be framed under the Act, and therefore simply outlined the provisions and left a framework hoping that the several Local Governments and the High Courts will work out the details and fill in the gaps, the provisions were completely ignored<sup>1</sup> and allowed to remain a dead letter and questions relating to valuation and jurisdiction continue to be decided on precedents and practice without any attempt being made to formulate rules and set out the law in a clear cut form?

So far about the defects. Now what is the remedy? There is only one and that is nothing less than a thorough overhauling of the Court-Fees Act by constituting an expert committee composed of persons who are quite conversant with the mofussil practice and have been in live touch with the litigation in the parts to which the Act is made to apply. They alone will have the requisite knowledge and hence the competence, to judge how far the present system in several cases deters a really aggrieved party from seeking redress in judicial tribunals, and in other cases tends to encourage the gambler in litigation. The effect of the unequal and in many cases illogical levy of court-fees on the

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1. Some High Courts rules have framed under the Act. See pages 869-892 *infra*. But an examination of some of the rules shows that in some cases the rules go beyond the provisions of Court-fees Act and it is for consideration whether they are not *ultra vires* in view of the provisions of S. 9 of Suits Valuation Act.

matters stand, an honour is not properly conferred on a resident of Canada, save with the assent of the Dominion Government, and an analogous rule might be applied in Australia pending the time when the absurdity of these distinctions strikes the minds of people everywhere as strongly as it has done those of Canada and the Union of South Africa; possibly, some effect may in the long run be produced by contemplation of the admitted fact that honours have been sold in England, and that an Act to punish touts has been passed.<sup>1</sup>

In other matters also it has been found necessary to recognize that the relations of the States and the Commonwealth differ essentially from those of the provinces and the Dominion in Canada. Thus, in the case of the miscellaneous conferences on all sorts of topics, which were not expected to result in treaties, and for which delegates were not accredited in treaty form—frequent before 1914, but now largely superseded by action under the labour clauses of the League of Nations Covenant, invitations to attend were sent direct to the States, and the States are asked to accord recognition to consular officers; similar requests are, of course, made directly to the Commonwealth also, but the claim cannot successfully be made that the Commonwealth should serve in these matters as the intermediary, since the States could effectively retort by refusing to act, if approached through the Commonwealth. Moreover, in harmony with the assurances given by the Secretary of State in 1907, in the case of conferences of an Imperial character, which concern matters within the activities of the States, they are duly invited direct to send representatives.<sup>2</sup>

The somewhat confused condition of relations is reflected in the decisions of the High Court, which establish what is already obvious, that the Constitution is far from being a complete and logical instrument. The High Court has been willing to use the term 'sovereign' of both the Commonwealth and the States in their own spheres, though it has been frankly admitted that the term 'sovereign' is here used in a slightly inaccurate sense, as both the Commonwealth and the States are in the ultimate issue merely creations of the one fully sovereign Parliament, that of the United Kingdom. It has, however, rightly been

<sup>1</sup> *Honours (Prevention of Abuses) Act*, 1925 (15 & 16 Geo. V. c. 72).

<sup>2</sup> e.g. the Surveyors' Conference of 1911; Cd. 5273, pp. 124 ff.

and uncertainty as to the law in the Courts which are bound to accept such decisions as their guide" (72 *All. 129*). In this manner there will be co-ordination of work, uniformity of application of the rules, and prevention of the leakage of revenue. At first the work of the inspecting staff will be the detection of loss of revenue, and gradually it will become more and more a preventive measure, which cannot obviously be computed as so many rupees, annas and pies recovered. As their activities increase, it would educate the staff of the subordinate courts, and the periodical inspections will keep them always on the alert, as will be evidenced by the dwindling number of detection of cases of collection of inadequate court-fee. As a financial proposition it will also be a success, as prevention is better than cure. But to make this check efficient there must be a perfected system as a centralised institution, manned by an expert staff and directed by a trained responsible officer at the head. This is not an innovation. In the Registration Department for instance, there is a periodical inspection and a systematic examination of the adequacy of stamp-fee in *every* document that has been registered and court-fee revenue is certainly in no way of lesser importance or magnitude than stamp revenue, or for the matter of that, any other kind of revenue.

It is also high time for the authorities to examine the question of valuation of suits, the principles that are to govern it, and the rules determining the jurisdiction of courts and promulgate a set of rules under the ample powers vested both in the Local Government and the High Court under the provisions of the Suits Valuation Act, that will dispel the cloud of uncertainty that now shrouds the topic, and make the law more rational and logical than it is at present.

The pious hope has been expressed ever and anon by the several High Courts, by one learned Judge after another that various portions of the Act may well be reconsidered or amended. That its provisions have provoked sharp conflict of views will be apparent from even a cursory reading of this commentary. In August, 1916, the Government of India addressed the Local Governments, proposing certain amendments in the Act and asking for suggestions. No immediate action however was taken by the Government of India upon the opinions received. In 1920, under the Devolution Rules, "Judicial Stamps" became a provincial reserved subject; and in 1922 and 1923 eight local Legislatures amended Schedules to the Act and also certain provisions in the Act itself, in order to raise additional revenue. The need for an amending Act in the Indian Legislature to deal with

organization under the League of Nations is essentially in the form of an obligation to submit the proposals for the acceptance of the States, just as in Canada reference is made to the provinces.

The independence of the States is also seen in the refusal of the Commonwealth High Court to permit the issue of *mandamus* to the Governor of a State, to hold an election for filling a vacancy in the office of Senator,<sup>1</sup> or of a *mandamus* to a Governor in Council<sup>2</sup> to hear and determine a petition of a convict for release, under the terms of an Act. These are political matters which evade judicial control as much in the case of the States as of the Commonwealth itself.

### § 3. *The Executive Power of the Commonwealth*

The executive power of the Commonwealth is very large, and extends to the maintenance of its constitution and its laws.<sup>3</sup> In addition to the powers conferred by Commonwealth Acts, the Executive has authority sole and exclusive over the transferred departments.

By s. 61 the executive power is vested in the Queen, and is exercisable by the Governor-General as the Queen's representative, a statement which appears to exclude the possibility of exercise by the Crown in person, though this is expressly permitted by the constitution of the Union: in Canada<sup>4</sup> it is doubtful whether the Crown could administer, save through the Governor-General. Section 2 provides that the Governor-General shall have and may exercise in the Commonwealth, during the Queen's pleasure, but subject to the constitution, such powers and functions of the Queen as her Majesty may be pleased to assign to him. This provision is not altogether free from ambiguity, but it is legitimate to suppose that it refers to matters outside the ambit of the executive government of the Commonwealth. Thus it covers what is not certainly included in the executive power, the prerogative of pardon, which is expressly

<sup>1</sup> *The King v. The Governor of the State of South Australia* (1907), 4 C. L. R. 1497.

<sup>2</sup> *Horwitz v. Connor* (1908), 6 C. L. R. 38.

<sup>3</sup> Quick and Garran, *Const. of Commonwealth*, pp. 300 f.; Clark, *Austr. Const. Law*, pp. 52-70; Kerr, *Austr. Const.*, pp. 217 ff.; Higinbotham C.J., in *Tey v. Musgrove*, 14 V. L. R. 349, 380.

<sup>4</sup> Clement, *Canad. Const.*, pp. 252 f.





the wide authority taken in the Commonwealth legislation. Lighthouses, beacons, buoys and lightships were not dealt with until the question of the Navigation Bill had been taken up, and legislation was first passed in 1911.<sup>1</sup>

The executive power in the Commonwealth is little affected by considerations of the federal character of the Commonwealth. But it has been held that the power of making regulations, when given to the Executive, is not available to enable it to defeat the probable decision of the High Court in a partly heard case, standing over for judgement, by altering the law with retrospective effect.<sup>2</sup> A similar point arose, but was not decided, in the English case of *Art O'Brien*.<sup>3</sup> It has also been held, probably differing herein in the latter point from the law accepted in other parts of the Empire, that not only has the Executive no power to bind the Crown to pay money without specific appropriation being requisite by Parliament,<sup>4</sup> but also that even an appropriation *ex post facto* is inadequate to validate an agreement entered into by the Executive without Parliamentary authority.<sup>5</sup> The rule laid down by the Privy Council<sup>6</sup> is clear; any contract made by the Crown through its agents is subject to the well-understood condition that funds will be provided by Parliament to meet the proposed contract; if this is not done, there arises no liability on the Crown, and a petition of right will not lie. Any contractor with the Crown, therefore, acts on his own peril of Parliamentary failure to approve payment.

#### § 4. *The Legislative Power of the Commonwealth and the States*

The legislative powers of the Commonwealth and the States are set out in ss. 106 and 107, asserting the continuation in the main of the powers of the States, and in the other sections also given below, which define the authority of the Commonwealth. To the powers of the Commonwealth fall to be added its authority regarding the constitution of the legislature, financial

<sup>1</sup> No. 14 of 1911; No. 17 of 1915; No. 6 of 1919.

<sup>2</sup> *Sendall v. Federal Commissioner*, 12 C. L. R. 664; cf. *Federated Engine-Drivers' and Firemen's Assoc. v. Broken Hill Prop. Co.* (1913), 16 C. L. R. 245.

<sup>3</sup> *Secretary of State for Home Affairs v. O'Brien*, [1923] A. C. 603.

<sup>4</sup> *The Commonwealth v. Colonial Combing, &c., Co.* (1922), 31 C. L. R. 421.

<sup>5</sup> *The Commonwealth v. Colonial Ammunition Co.* (1923), 34 C. L. R. 198.

<sup>6</sup> *Commercial Cable Co. v. A.-G. for Newfoundland*, [1912] A. C. 820.

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levied shall be for the use of the Commonwealth ; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.<sup>1</sup>

117. A subject of the Queen resident in any State shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

119. The Commonwealth shall protect every State against invasion, and, on the application of the Executive Government of the State, against domestic violence.

#### PART V. POWERS OF THE PARLIAMENT

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to :

- (i) Trade and commerce with other countries, and among the States ;<sup>2</sup>
- (ii) Taxation ; but so as not to discriminate between States or parts of States ;
- (iii) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth ;
- (iv) Borrowing money on the public credit of the Commonwealth ;
- (v) Postal, telegraphic, telephonic, and other like services ;<sup>3</sup>

<sup>1</sup> This was due to Mr. Higgins's fear of sacerdotalism ; Quick and Garrahan, *op. cit.*, pp. 951-3.

<sup>2</sup> Including under s. 98 navigation and shipping and State railways.

<sup>3</sup> *Commonwealth v. Progress Advertising Co.*, 10 C. L. R. 457.

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- (xxix) External affairs ; <sup>1</sup>
- (xxx) The relations of the Commonwealth with the islands of the Pacific ;
- (xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws ; <sup>2</sup>
- (xxxii) The control of railways with respect to transport for the naval and military purposes of the Commonwealth ;
- (xxxiii) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State.
- (xxxiv) Railway construction and extension in any State with the consent of that State ; <sup>3</sup>
- (xxxv) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State ; <sup>4</sup>
- (xxxvi) Matters in respect of which this Constitution makes provision until Parliament otherwise provides ;
- (xxxvii) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law ;
- (xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia ; <sup>5</sup>
- (xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the federal judicature, or in any department or officer of the Commonwealth.

<sup>1</sup> *Extradition Act*, 1903, No. 12 ; *High Commissioner Act*, 1909, No. 22 ; *Nauru Island Agreement Act*, 1919, No. 8 ; *Treaties of Washington Act*, 1922, No. 4. The Nauru Island Act falls also under (xxx). Cf. *McKewey v. Mcagher* (1907), 4 C. L. R. 265, 278.

<sup>2</sup> See *Lands Acquisition Act*, 1906-16 ; s. 20 is invalid ; *The Commonwealth v. New South Wales* (1923), 33 C. L. R. 1.

<sup>3</sup> See Act No. 25 of 1910 ; No. 4 of 1907 ; No. 7 of 1911 ; No. 3 of 1912 ; No. 31 of 1917 ; No. 4 of 1918 ; No. 36 of 1920 ; No. 11 of 1923 ; No. 54 of 1924 ; No. 11 of 1925.

<sup>4</sup> *Commonwealth Conciliation and Arbitration Act*, 1904-21.

<sup>5</sup> This gives no power to alter Imperial Acts.

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In some cases there coexists full power of co-ordinate legislation ; thus taxation (ii) is open to both,<sup>1</sup> there being no such narrow restriction as in the case of Canada, where the provinces have only powers of direct taxation, though the States are debarred from levying customs and excise. Astronomical and meteorological observations (viii) are common ground, but New South Wales insists that the Commonwealth should exercise the power and find the funds. Legislation as to census and statistics (xi), foreign and other corporations (xx), and invalid and old age pensions might be concurrent, but the States have naturally taken to a considerable extent advantage of the Commonwealth system to drop their own, save for special cases. In other instances, as under xxxiii, xxxiv, xxxvii, and xxxviii, legislation by the State is necessary as part of the scheme of the federal authority to legislate. In other cases Commonwealth legislation must practically supersede all State legislation ; thus in regard to bills of exchange and promissory notes (xvi) ; copyright, patents, and trade marks (xviii) ; and naturalization (xix). In these cases the legislation passed contained clauses providing that the State Acts shall not be applicable,<sup>2</sup> a provision due to acceptance of the ruling in the case of Canada that the Dominion Parliament cannot repeal a provincial statute, but can only render it inapplicable by repugnancy, whence it has been deduced that the repeal of a Commonwealth Act brings the State Acts automatically back into operation. In some cases, where Commonwealth power is predominantly active, there may be room for supplementary State action, as in the case of immigration and emigration (xxvii) and the influx of criminals (xxviii), several of the States having deemed it desirable to legislate with a view to preventing the entry into their territory of criminals from other parts of Australia. Similarly, it is clearly open to the States to make laws differentially affecting persons of any specified race, which may exist side by side with Commonwealth legislation on the topic applying more generally. As regards external trade, though the States have lost their old right to

<sup>1</sup> Cf. *Municipal Council of Sydney v. The Commonwealth* (1904), 1 C. L. R. 208, 232, per Griffith C.J.

<sup>2</sup> *Bills of Exchange Act*, 1909 ; *Copyright Acts*, 1905 and 1912 ; *Patents Act*, 1903-9 ; *Life Assurance Companies Act*, 1905 ; *Marine Insurance Act*, 1909 ; *Naturalization Act*, 1903 ; *Designs Act*, 1906 ; *Coinage Act*, 1909.



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• § 5. *Relations of the Legislative Powers of the States and the Commonwealth*

By reason of the restriction of appeal from the High Court to the Privy Council on constitutional issues save by its own certificate, the interpretation of the Commonwealth Constitution has lain largely in the hands of the High Court. This fact has resulted in a very interesting phenomenon ; whereas with but little variation the interpretation of the Canadian constitution has proceeded on the same lines, in the case of the Commonwealth a whole series<sup>1</sup> of important decisions has been pronounced by the Court, differently constituted, to have been based on an unsound theory, and the result is that the earlier decisions of the Court are all open to doubt, in so far as the theory in question was adduced to support the conclusions arrived at. As the theory appeared to the writer<sup>2</sup> unsound, when he produced the first edition of this work, its final abandonment is naturally gratifying as a triumph of mature reasoning over preconceived ideas of the nature of a federal constitution, but it is true that there must elapse a considerable period before any certainty can be restored as to the meaning of important points in the constitution. Nor can an element of uncertainty be overlooked ; the interpretation of the constitution has been once seriously changed ; it is too much to predict that no such result will occur again.

(a) *The Immunity of Instrumentalities*

In *D'Emden v. Pedder*,<sup>3</sup> on appeal from the Supreme Court of Tasmania, the High Court enunciated the famous doctrine of the immunity of instrumentalities, which implies a prohibition on the States or Commonwealth to use their power in order to affect, however incidentally, the free exercise of the authority of the other, a doctrine laid down by Chief Justice Marshall in 1819 for the United States in *McCulloch v. State of Maryland*,<sup>4</sup> and ever since regarded as fundamental in American constitutional law. It emphasized that it was not a question of actual

<sup>1</sup> *Engineers' Case* (1920), 28 C. L. R. 129.

<sup>2</sup> See ed. 1, ii. 833-5.

<sup>3</sup> (1904) 1 C. L. R. 91. Cf. *Municipal Council of Sydney v. The Commonwealth*, *ibid.*, 208 ; *Roberts v. Ahern*, *ibid.*, 406. Contrast *Wollaston's Case* (1902), 22 V. L. R. 357, 387, 388, *per* Madden C.J.

<sup>4</sup> 4 Wheat. 316.

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unless taken away; and to conclude that, unless and until some definite enactment could be pointed to, showing that the powers of the State to tax had been taken away, the taxation must be deemed valid. The doctrine of *McCulloch v. Maryland* was definitely declared not to be applicable to the Commonwealth constitution, which was not that of the federation of the United States, and the interpretation of that constitution had not relevantly been shown to be applicable to it. In *Barter v. Commissioners of Taxation, New South Wales*,<sup>1</sup> the High Court was faced with the necessity of deciding whether it would follow the decision of the Privy Council or not. It was decided by the majority (Griffith C.J., Barton and O'Connor JJ.) that the High Court was entitled to follow its own judgement and to disregard the view of the Privy Council, and the arguments of the Council were controverted in detail. The fact stressed by the Council, that s. 114 with its express prohibition of taxation of property of State or Commonwealth by the other was a serious objection to the doctrine of implied prohibition, was met by the contention that the section was intended to negative the American distinction between property held by a government *qua* government, which was immune, and property held by it *qua* a commercial concern, which was not immune. Certain misconceptions as to the sense of the term 'unconstitutional' were removed, the majority insisting that to them it merely meant *ultra vires*, and that they founded the doctrine of implied prohibition on the Act of 1900 itself, and not on any vague theories. Isaacs J.<sup>2</sup> dissented, holding that, while the Privy Council judgement might properly not be held to be binding on the High Court, seeing that it had the right to prevent appeals going to the Privy Council in such cases from its own decision, yet the matter ought to be reconsidered, and the decision on its merits should be that of the Privy Council. Higgins J.<sup>3</sup> went further, and held that the mere fact that the High Court could in a certain class of cases prevent appeals going to the Council did not in the slightest impair the superior weight of the power of the Council, when it did deliver a judgement. It must be admitted that, while the judgement of the majority was able, it was not convincing as an exposition of law; there was a good deal of

<sup>1</sup> (1907) 4 C. L. R. 1087.

<sup>2</sup> *Ibid.*, at p. 1159.

<sup>3</sup> *Ibid.*, at p. 1161.

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tax. This Act was manifestly invalid, on a strict application of the doctrines of the Court, but it managed to rule it valid in *Chaplin v. Commissioners of Taxation for South Australia*<sup>1</sup>; to such straits do unsound judgements reduce a Court.

(b) *The Reserved Powers of the States*

Essentially connected with the doctrine of immunity of instrumentalities was that of the reserved powers of the States, which it was implied in the Constitution must not be interfered with, except under clear authority in the Constitution itself. In *Federated Amalgamated Government Railway &c. Association v. New South Wales Traffic Employees' Association*<sup>2</sup> it was ruled that this doctrine prohibited the registration of an organization consisting entirely of federal employees of a State railway, and in *Federated Engine Drivers' and Firemen's Association v. Broken Hill Proprietary Co.*<sup>3</sup> that the Board of Water Supply and Sewerage, Sydney, was a State Governmental agency, and was not bound by an industrial award under the *Commonwealth Conciliation and Arbitration Act*, though in a subsequent case *eodem nomine*<sup>4</sup> it was ruled that a municipality is not a State instrumentality, and, therefore, is bound by federal legislation.

A much more valid view was that taken in *Peterswald v. Bartley*,<sup>5</sup> in which it was vainly sought to find invalid the brewers' licence fees imposed under the New South Wales *Liquor Act*, No. 18 of 1898, on the score that the State was in effect levying excise duties, a power possessed only by the Federation. The Court had no difficulty in insisting in this case that the powers of the States were not to be whittled down by an interpretation of excise which would confer on the Commonwealth power to regulate the carrying on of trades in each State. But a much more dubious result was achieved in *The King v. Barger*<sup>6</sup> in which was raised the validity of Mr. Deakin's famous policy of the 'new protection'; the Commonwealth by imposing the *Excise Tariff*, 1906, sought to regulate conditions of employment through the enactment that the duties would not be levied if certain conditions were complied with. There was

<sup>1</sup> (1911) 12 C. L. R. 375.

<sup>2</sup> (1906) 4 C. L. R. 488.

<sup>3</sup> (1911) 12 C. L. R. 398.

<sup>4</sup> (1913) 16 C. L. R. 245.

<sup>5</sup> (1904) 1 C. L. R. 497; 4 S. R. (N.S.W.) 290.

<sup>6</sup> (1908) 6 C. L. R. 41. See *Parl. Pap.*, 1907-8, Nos. 134, 147; 1908, No. 16.

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definitely raised. The respondents were carrying on operations for the State of Western Australia under the *State Trading Concerns Act*, 1914-16, and there were circumstances in which an industrial dispute could be held to exist, if the respondents were subject to the *Commonwealth Conciliation Act*. The decision in the case of the railway servants of New South Wales<sup>1</sup> had negatived the application of the Act; the High Court took precisely the opposite view, declining, despite the fact that it was thus reversing a fundamental principle of interpretation of the constitution, to allow an appeal to the Privy Council, while a very ill-advised effort of the States to secure leave from the Privy Council, the hopelessness of which was pointed out by the writer,<sup>2</sup> resulted in the contemptuous dismissal of a hopeless case.<sup>3</sup>

The case might indeed have been disposed of consistently with the acceptance of the doctrine of the immunity of State instrumentalities by accepting the quite valid United States distinction, e. g. in *South Carolina v. United States*,<sup>4</sup> between the validity of the claim in case of governmental functions and its inapplicability to mere trade activities. If, as is the case, the doctrine of immunity rests on an implicit covenant by the parties to a federal compact that the federation and states will allow each other free use of their instrumentalities, it is clear that this implied contract is not violated by the taxation, for instance, of commercial activities. But the decision works on a much broader basis. The Court definitely rejected the old doctrine of immunity of instrumentalities, none of those judges who had maintained it being any longer alive. It deliberately laid down the principle adopted by the Privy Council, that the Act of 1900 should receive a statutory construction, as opposed to that based on the conception adopted by Sir S. Griffith of a federal compact. It adopted, it is true, the decisive language of *D'Emden v. Pedder*:<sup>5</sup> 'when a State attempts to give to its legislative or executive authority an operation which, if valid, would fetter, control, or interfere with the free exercise of the legislative or executive power of the Commonwealth, the attempt, unless expressly authorized by the constitution, is to

<sup>1</sup> (1906) 4 C. L. R. 488.

<sup>2</sup> Keith, *J. C. L.* iv. 107 f.; v. 278.

<sup>3</sup> *Minister for Trading Concerns of Western Australia v. Amalgamated Society of Engineers*, [1923] A. C. 170. <sup>4</sup> 199 U.S. 437. <sup>5</sup> (1904) 1 C. L. R. 91.



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from the unfettered power of borrowing money, which made it possible to decide as to the terms, and in *Davoren v. Commonwealth Commissioner of Taxation*<sup>1</sup> it was held with equal decision that there was no reciprocity, and that State salaries were not exempt from Commonwealth income tax. There can be no doubt that the doctrines are sound, however little palatable they may be to the States, which have so long profited by the doctrine of immunity.

(d) *Control of Companies*

The federal power as to companies is very far from being accurately defined. In *Huddart Parker & Co. Proprietary Ltd. v. Moorehead*<sup>2</sup> the issue was the question of the legality of ss. 5 and 9 of the *Australian Industries Preservation Act, 1906*,<sup>3</sup> which sought to prevent foreign companies and financial or trading companies formed within the Commonwealth combining to restrain trade to the detriment of the public, or to destroy by unfair competition any Australian industry, or to monopolize trade to the detriment of the public. It was sought to justify these provisions under s. 51 (xx), but the Court was unable to accept this theory. There was agreement that the head in question gave no power whatever to create corporations, and Griffith C.J. and Barton J. held that the power conferred permitted the Commonwealth to lay down that such corporations might not engage at all in trade within a State, or subject operations to conditions, but they denied that the Commonwealth could regulate the mode of carrying on operations when the companies were admitted to trade in a State. O'Connor and Higgins JJ. in effect held that the Commonwealth could only deal with the recognition of the status of companies as legal entities, and prescribe conditions for such recognition, but that it could not regulate the contracts to be made by such companies once recognized. Isaacs J. alone held that the authority given in (xx) must be wide enough to cover the regulation of the dealings of such companies with persons outside the companies. The proposal to increase the power of the Common-

<sup>1</sup> 29 A. L. R. 129. So, of course, as to loans.

<sup>2</sup> (1908) 8 C. L. R. 330.

<sup>3</sup> For the limited scope of the Act, see *A.-G. for the Commonwealth v. Adelaide Steamship Co.*, [1913] A. C. 781 ; (1912) 15 C. L. R. 65.

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<sup>1</sup> (1910) 10 C. L. R. 266; contrast 37 C. L. R. 466.

<sup>2</sup> *Ibid.*, 278 ff.

<sup>3</sup> *Ibid.*, 289 ff.

<sup>4</sup> 6 C. L. R. 469.

<sup>5</sup> 8 C. L. R. 330.

<sup>6</sup> 10 C. L. R., at pp. 301 ff.

<sup>7</sup> *Ibid.*, 310 ff., 331 ff.

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out that the rule might, so far from promoting industrial peace, introduce strife where none existed, and thus could not be deemed arbitration or conciliation. This is not inconsistent with the finding in *George Hudson Ltd. v. Australian Timber Workers' Union*<sup>1</sup> that s. 3 of the *Conciliation and Arbitration Act*, 1921, is valid, though it makes an agreement between parties binding as an award, and that such an agreement binds the assigns of the contracting party. It was in that case expressly pointed out that the common rule was defective, because it extended the superficial area of a dispute, contrary to the operation of such an agreement as was in that case under examination. Further, the authority of the ruling that the Court cannot by award ignore a determination of a State Wages Board has been destroyed by the decision in *Federated Engine Drivers' and Firemen's Association v. Adelaide Chemical and Fertilizer Co.*,<sup>2</sup> in which it was held by the whole Court that the award of the Conciliation Court might give a lower minimum wage than that of a State Wages Board, the Court asserting that it did not homologate the views to the contrary in the earlier cases. They rested, in effect, on the doctrine of reserved powers, and that gone are of no further value.

It is now clear law<sup>3</sup> that a municipal corporation is subject to the power of the Court, and that a Minister of State in a State when engaged in conducting the trading concerns of the State is not exempt, as in the case of railways, steamship services &c. But it is still open whether in respect of the governmental functions of the State it can be brought under an award of the Court, and it may be that the better opinion is against such submission. In *Waterside Workers' Federation v. J. W. Alexander Ltd.*<sup>4</sup> it was held that the Court of Conciliation was not a Court within the meaning of the Constitution, in view of the President's limited tenure of office, and that, accordingly, it had not the power to impose its mandates by injunction.

A much more serious question was dealt with in *Waterside Workers' Federation of Australia v. Commonwealth Steamship Owners' Association*.<sup>5</sup> The issue was whether in setting up a Court of Conciliation and Arbitration the Commonwealth had

<sup>1</sup> (1923) 32 C. L. R. 413.

<sup>2</sup> (1920) 28 C. L. R. 1.

<sup>3</sup> *Engineers' Case*, 28 C. L. R. 129; cf. 37 C. L. R. 466.

<sup>4</sup> (1918) 25 C. L. R. 434.

<sup>5</sup> (1920) 28 C. L. R. 209.

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any other legal issue, on the application of the parties. The Privy Council has ruled that no appeal lies to it in such a case as to the existence of a dispute without a certificate, and it is uncertain whether a Justice in Chambers could give such a certificate. This is anomalous, for the rule of the Judiciary Act is that unless the full Court sits there shall not be given a decision on a constitutional issue, unless a majority of all the Justices concurs in the finding.

(f) *The Coasting Trade, Navigation and Shipping*

In *SS. Kalibia v. Wilson*<sup>1</sup> the High Court had to determine the validity of the *Seamen's Compensation Act*, 1909. The case itself raised the issue very indirectly; the ship was trading from New York to Australian ports, and merely out of courtesy a tiny parcel was carried from Adelaide to Brisbane, which was only in the most formal sense engaging in the coasting trade, and the matter might well have been disposed of on that ground. But the injured seamen came within the working of the Act as being injured while on a British or foreign ship, not registered in Australia, engaged in the coasting trade, and the High Court considered whether this provision could be made *intra vires*. It held that the authority as to navigation and shipping given in s. 98 merely enlarged the authority as to trade and commerce in s. 51 (i) by making it clear that it included shipping, and gave power to regulate conditions affecting seamen, but it did not remove the restriction to commerce between the States or with foreign countries. It gave no power to deal with intra-State shipping. Now it was clear from the Act itself that it was essentially part of the coasting trade under the Act to take up cargo at one port in a State for carriage to another, and that certainly was invalid. Nor was this a case where the invalid part could be omitted and the rest stand, for, when the Legislature showed a deliberate intention to treat all ships alike, it would be enacting a new law to lay down what it intended for all as applying to some only. The Act of 1909 was, therefore, ruled invalid, and had to be replaced by an improved and limited measure in 1911. The same doctrine, denying power to regulate conditions for intra-State shipping, was asserted in *Newcastle and Hunter River Steamship Co. v. Attorney-General*

<sup>1</sup> (1910) 11 C. L. R. 680.



stamped plaint subsequently could not relate back to the date of filing the application to sue *in forma pauperis*. *Krishna Ayyangar v. Janaki Ammal*, 42 L. W. 655 = 1935 Mad. 878.

*Page 46, 1st para.*

**Pauper appeal.**—See also *Shao Shankar v. Ram Dei*, 1935 O. W. N. 162 = 1935 Oudh 231, holding that the Court can allow payment of court-fee after rejecting the application for permission to appeal *in forma pauperis*. The Rangoon High Court has held that the Court need not automatically pass an order granting time while dismissing the application for leave to appeal *in forma pauperis*. *Vertannes v. Lawson*, 13 Rang. 50 = 1935 Rang. 336.

*Page 63, para. 1 and page 585, para. 4.*

**Suit for reduction of maintenance.**—*Rajammal v. Thyagaraya Ayyer*, 69 M. L. J. 203 = 42 L. W. 42 = 1935 Mad. 655, is a recent Madras decision on the point, according to which, the suit is incapable of valuation falling under Art. 17-1) corresponding to Art. 17 (6) of the main Act.

*Pages 83, 356 and 587.*

**Written statement claiming separation of defendant's share.**—See also 16 Lah. 901.

*Page 87, line 5, and page 97, line 22.*

**Whether prayer for consequential relief necessary.**—See also *Bishan Sarup v. Musa Mul*, 1935 A. L. J. 869 = 1935 All. 817 (F. B.), where the suit was for declaration that certain sale deeds were null and void as against the plaintiffs.

*Page 106, line 20.*

See also *Aijaz Ahmad v. Nazirul Hasan*, 1935 All. 849, holding that the plaintiff cannot give any arbitrary valuation and the Court is not bound to accept such valuation.

*Page 106, 4th line and page 120, para No. 4.*

Where the plaintiff in a suit for declaration and injunction chooses to value the relief at a certain figure, for the purposes of jurisdiction, he is bound to pay court-fee on the same amount. *Jani v. Bishan Singh*, 1935 Lah. 698. See also *Ram Chhabila v. Sat Narain*, 1935 A. L. J. 1319, holding that in a suit for declaration and injunction regarding the plaintiff's exclusive right to sit at a particular ghat and to take '*dan dachhina*' for *shankalap*, court-fee should be

not; in such cases any differentiation by State Acts must now be read to apply merely to absence from the Commonwealth. The section applies only to subjects of the Crown who are resident, and the benefit of no discrimination has no application either to aliens or to such subjects of the Crown as are not resident, in the sense of that term which connotes a measure of permanence; thus a person admitted under a temporary permit to visit Australia as a student or merchant is not a resident.<sup>1</sup> Nor, apparently, is a corporation to be deemed a resident, though this seems artificial. The clause has been held, clearly rightly, in *Lee Fay v. Vincent*,<sup>2</sup> not in the slightest degree to interfere with the States dividing up their own subjects into classes and treating them differentially. Nor is it of much importance, for in *Davies and Jones v. Western Australia*<sup>3</sup> it was laid down that the differentiation must be on residence only; if, for instance, it is based on domicile, then it is perfectly valid to allow lower rates of duty to be levied on estates, the beneficial interest in which passes to persons domiciled in Western Australia.

The more general issue, whether the Commonwealth can legislate under its powers for one State only, e. g., pass an insolvency law for Victoria, is not yet answered by any reported case. It seems clear that it could be; the instances cited from Canada are cases merely of legislation under the residual power of the Dominion, and even they are in no wise decisive against the power, if it should happen to be the case that such legislation for one province was reasonably necessary for the peace, order, and good government of Canada. At any rate, the absence of any close parallel between the constitutions renders any deduction useless.

#### (h) *Immigration and Aliens*

The power of the Commonwealth to determine conditions of naturalization carries with it the right to deprive a man of naturalization if he prove unworthy, and the power to deport is one which was asserted successfully in the case of the removal from the Commonwealth of the Kanakas,<sup>4</sup> and later more generally asserted in *Ferrando v. Pearce*<sup>5</sup> as legitimate both

<sup>1</sup> See Kerr, *Austr. Const.*, pp. 72 ff.

<sup>2</sup> (1904-5) 2 C. L. R. 29.

<sup>3</sup> (1906) 4 C. L. R. 395.

<sup>4</sup> (1908) 7 C. L. R. 389.

<sup>5</sup> (1918) 25 C. L. R. 241.

holding that the suit is for declaration of title and for injunction. Where the suit is for a permanent injunction to restrain the villagers of a certain village from quarrying or removing stones etc., without paying the necessary fees to the plaintiff and obtaining a license, and there is only an allegation relating to the cause of action, namely, that the plaintiff has a right to the property and the right has been infringed, it does not amount to a prayer for declaration as to title. There can be no objection to the maintainability of the suit in that form. *Al. V. R. Ct. Veerappa Chettiar v. Arunachalam Chetti and others*, C. R. P. No. 700 of 1935 (Mad.) decided on 8-11-1935.

*Page 125, end of 1st para.*

Where in a suit for account brought against the guardian for the years when he was in management of the plaintiff's properties, a specific claim is made for a certain amount which was really lent out of the plaintiff's estate by the defendant on a pronote taken in his own name and in satisfaction of which the defendant subsequently got a sale deed of certain lands, no separate court-fee is payable for the claim and the proper course is to treat it as an item in the account to be rendered. C. R. P. No. 1807 of 1934 (Mad.) decided on 28-10-1935 (69 M. L. J. Notes of recent cases, p. 58).

*Page 126, para 2.*

**Valuation in account suits.**—Under O. 7, R. 2, C. P. C., the plaintiff has to make a valuation of his claim only approximately and not with any certainty and the approximation may be a rough and ready approximation such as a plaintiff in any given case is able to give. *Atma Ram Charan Das v. Bisheshar Nath Dinu Nath*, 1935 Lah. 689. "In this case the plaintiff stated in the plaint that a sum of Rs. 8,000 was due to him from the defendants, but valued the suit only at Rs. 500. The valuation was held to be according to law. *Ibid*,

*Pages 132 and 139.*

**Appeal by defendant against a preliminary decree in account suit.**—According to the decision of the majority of Judges of the Special Bench of the Patna High Court in *Deoji Goat v. Tricumji Jivan Das*, 14 Pat. 658—1935 Pat. 396 (S. B.), a defendant appealing against a preliminary decree in a suit for accounts is not bound by the valuation given by the plaintiff and is entitled to place his own valuation upon the relief which he seeks. But the valuation he places should not, by the decisions of that court, be an arbitrary amount

true, but as Higgins J.<sup>1</sup> observed, the power given is not to legislate as to immigrants but as to immigration, and there are probably bounds beyond which the High Court will not go in sanctioning the validity of legislation of this kind. In the much disputed case of the efforts to deport Johannsen and Walsh in 1925,<sup>2</sup> the measure under which it was sought to act was s. 7 of the *Immigration Amendment Act*, 1925, No. 7, passed in view of the shipping strike, primarily concerning British seamen, but supported by Australian agitators. The law permitted the proclamation of a state of serious industrial disturbance, and, when such a proclamation had been issued, the Minister, if satisfied that any person not born in Australia had been concerned in Australia in acts directed towards hindering or obstructing, to the prejudice of the public, the transport of goods or the conveyance of passengers in relation to trade and commerce with other countries or between the States, and that the presence of such person in the Commonwealth was prejudicial to its peace, order, and good government in the sphere of Commonwealth authority, might summon him before a Board to show reason why he should not be deported. The Act was held invalid on varying grounds by the Court; one view insisted on the fact that the Minister was apparently given the discretion to decide whether acts were really directed against matters within Commonwealth as opposed to merely State jurisdiction; further, exception was taken to the fact that in one of the cases the man had entered the country before the Commonwealth commenced, and therefore could not possibly be regarded as an immigrant, while objection was indicated towards the application of the Act to any person, however long in Australia and however much identified by residence with the Commonwealth.

The right of the States to legislate as to immigration is not wholly absent, but its limits are indicated by *R. v. Smithers, Ex parte Benson*,<sup>3</sup> where it was held by the High Court that the New South Wales Parliament could not legally provide that, if any resident of the State had been convicted of an offence in another State punishable by imprisonment for a year or upwards, he could not re-enter the State for a period of three

<sup>1</sup> Ibid., at p. 574.

<sup>2</sup> Keith, *J. C. L.* viii. 133-5; 37 C. L. R. 36.      <sup>3</sup> (1913) 16 C. L. R. 99.

*Page 170, 1st para.*

In a suit for recovery of the plaintiff's share of the property sold, for arrears of Government revenue court-fee need be paid only on the value of the plaintiff's share of the property. The amount which the property fetched in the sale cannot be taken into account. *Panchamdeo Singh v. Kuldip Sahay*, 16 Pat. L. T. 845 = 1935 Pat. 459.

*Pages 176-179*

**Suit for redemption and surplus profits.**—In *Pothanna v. Satyanandachariu*, 60 M. L. J. 698 = 33 L. W. 785 = 1931 Mad. 479, it has been held that a suit for redemption of a usufructuary mortgage with a claim for recovery of surplus profits is still a suit for redemption and court-fees are payable only on the principal amount of mortgage under S. 7, cl. ix and no court-fees need be paid on the surplus profits claimed.

*Page 271, end of 2nd para.*

This view has been recently followed by Varadachariar, J., in an unreported case C. R. P. No. 490 of 1935 decided on 29.11.1935 (69 M. L. J. Notes of recent cases, p. 84).

*Page 288, end of 1st para.*

The point has been raised recently in the Madras High Court but the Court being of opinion that the question of category in which the suit ought to be placed is also a question of valuation and that the language employed by the Full Bench in 4 M. L. J. 183 may need reconsideration have referred the matter to a Full Bench. (69 M. L. J. Notes of recent cases, p. 77). In this case, the question is whether the suit is to be treated as falling under s. 7 cl. iv (b) where court-fee has to be paid on the value stated by the plaintiff in his plaint or as falling under Art. 17-B of Sch. II, as being incapable of valuation and not otherwise provided for in the Act. This question may in one sense be treated as a question of valuation but there may arise cases as stated in the commentaries in the body of the book where the question which in the opinion of the appellate court has been wrongly decided cannot at all be deemed to be one of valuation. For instance, a question may arise, as to whether a suit is one to set aside a summary decision of a court falling under Art. 17 (1) of Sch. II or whether it must be treated as one for declaration falling under Art. 17-A (1). Supposing in such a suit, the properties forming the subject-matter of the suit are correctly valued for jurisdiction purposes at an amount

decide whether the discretion of the Governor-General in Council was correctly used. For this he relied on *Lloyd v. Wallach*,<sup>1</sup> in which the High Court held that the Minister could not be required to explain the grounds of his belief that Wallach was disaffected or disloyal, and that it was a sufficient reply to a writ of *habeas corpus* that he was detained, under War Precautions Regulation 55 (1), under the warrant of the Minister reciting that, on information received, he had reason to believe and did believe that Wallach was disaffected or disloyal. Gavan Duffy and Rich JJ. may be excused for dissenting from this judgement, and holding that, the powers of the Commonwealth being enumerated powers, it was necessary under the principle laid down in *Colonial Sugar Refining Co.'s Case*<sup>2</sup> to treat the defence power in its natural interpretation, and not to give it a meaning which would destroy the authority of the States. None the less Isaacs J. in *The Welsbach Light Company of Australasia v. Commonwealth of Australia*<sup>3</sup> laid stress on the wide nature of the power; 'defence includes every act which in the opinion of the proper authority is conducive to the public security. Those who are entrusted with the ultimate power of guarding the national safety are not bound to subordinate that consideration to any other'. As the only matter at issue was a technical question of trading with the enemy, the proposition seems rather large for the occasion; but the actual decision was no doubt right, for the commerce power (i) might well be invoked in aid of it. More clearly valid still was the decision in *Ferrando v. Pearce*<sup>4</sup> that the Government could deport to Italy an Italian reservist called up by the Italian Government under an arrangement agreed to by the Commonwealth, and that the Attorney-General could authorize the Public Trustee to sell enemy subjects' shares. The legality of punishing efforts to prejudice recruiting was naturally asserted, no validity being accorded to the absurd plea that the recruiting was invalid as the troops were to be sent outside Australia.<sup>5</sup> In *Joseph v. Colonial Treasurer of New South Wales*<sup>6</sup> it was agreed that, if there was any power in the case of Australia of exercising the royal war prerogative, it did not vest in the Governors of the

<sup>1</sup> (1916) 20 C. L. R. 299.

<sup>2</sup> [1914] A. C. 237.

<sup>3</sup> (1916) 22 C. L. R. 268.

<sup>4</sup> (1918) 25 C. L. R. 241.

<sup>5</sup> *Sickerdick v. Ashton* (1918), 25 C. L. R. 506.

<sup>6</sup> (1918) 25 C. L. R. 32.

v. *Raja Janaki Nath Roy*, 38 C. W. N. 185, was dissented from in this case but as the facts were somewhat distinguishable from those of that case, there was no occasion for a reference to a Full Bench.

*Page 372, last para.*

**Property held with general power to confer beneficial interest.**—There is some conflict of decisions on the point whether such property is liable to probate duty. The exemption given in Annexure B of Sch. III, would not strictly cover such property and so far as Madras is concerned, the decision in 25 M. 515, holds the field. See discussion at p. 490, *infra*.

*Page 337, line 8.*

**Balance due on dealings.**—A claim for the charges of sending registered notice in a suit for recovery of money in respect of dealings need not be charged to court-fee separately under S. 17 and court-fee need be paid only on the aggregate amount claimed. Referred Case No. 10 of 1934 (Madras) decided on 21-11-1935.

*Page 441, 14th line.*

**Appeal relating to future interest.**—The Lucknow High Court has held that in an appeal relating to future interest, *ad valorem* court-fee should be paid on the amount of interest claimed or decreed up till the date of the presentation of the appeal. *Mohammad Sadiq Ali Khan v. Niaz Ahmad*, 157 I. C. 633 (Oudh).

*Page 457, para 5.*

S. 10 of the General Clauses Act has no application and a review application filed on the re-opening day must bear full court-fee if the court was closed on the 89th day.

*Page 500, last para.*

**Pauper application for succession certificate.**—An applicant for a succession certificate can be considered to be a "pauper" only if he is not possessed of sufficient means to enable him to pay the court-fee on the application for succession certificate. The deposit required under s. 379, Succession Act, cannot be considered to be the "Court-fee payable on the plaint" or in the case of application for certificate, on such application, for the purpose of determining whether the applicant is a "pauper". *Mt. Ehatishammunnissa v. Mir Hudi Ali*, 1935 All. 735. It was also doubted whether s. 141 C. P. Code, makes the general provisions of the Code applicable to proceedings for the grant of succession certificates under the Succession Act of 1925. *Ibid.* But compare the unreported decision of the Madras High Court in Application No. 2925 of 1930 commented on at p. 386 *infra*.

found that the appointment of a Royal Commission to inquire into some definite matter over which the Commonwealth had legislative power was valid, but it was impossible to give general powers, on the footing that they were incidental to inquiries which the Parliament might in future direct.

The judicial power in the Commonwealth is limited by the constitution, and, therefore, it has been held by the majority of the High Court *In re Judiciary Act*,<sup>1</sup> that Part xii of the *Judiciary Act*, s. 88, which empowered the Governor-General to refer to the High Court any issue as to the constitutionality of a statute of the Parliament, and made the judgement of the High Court on such a reference final and not susceptible to any appeal, was beyond the power of the Parliament, as not being a true exercise of judicial power. Higgins J. dissented, emphatically disapproved of the doctrine of the separation of powers, and argued that there was nothing in the Constitution which prevented the assignment to the High Court of powers not strictly judicial. The contrast here with the case of Canada is complete, and arises directly from the separation of authority adumbrated in the Constitution. On the other hand, there is no objection to the conferring on executive officials of powers which in English law are often styled semi-judicial, for instance the power under the *Australian Industries Preservation Act*, 1906, of making inquiries from persons who may be able to give information regarding alleged violations of the Act,<sup>2</sup> or that under the *Immigration Act* conferred on a Board to investigate the issue whether or not a person should be deported.<sup>3</sup> These, it is laid down, definitely are Executive functions, and not an illegitimate entrusting to something other than a Court, within the meaning of the Constitution, of the judicial power.

It is a legislative act to provide for the forfeiture of enemy property,<sup>4</sup> and there is no principle in the Constitution requiring that the taking of property should, as in the United States, be subject to due process of law. Nor is there anything to prevent the Commonwealth passing *ex post facto* laws.<sup>5</sup> It has been

<sup>1</sup> (1921) 29 C. L. R. 257.

<sup>2</sup> *Huddart Parker & Co. Prop. Ltd. v. Moorehead* (1908), 8 C. L. R. 330.

<sup>3</sup> *R. v. Macfarlane* (1923), 32 C. L. R. 518. Cf. *Cornell v. Deputy Federal Commissioner* (1920), 29 C. L. R. 39, 47.

<sup>4</sup> *Roche v. Kronheimer* (1921), 29 C. L. R. 329.

<sup>5</sup> *R. v. Kidman* (1915), 20 C. L. R. 425.



suits, the plaintiff is to fix his own value (*vide* s. 7 cl. iv) and courts have been accepting such value though it may be arbitrary and inadequate, in the absence of clear rules laying down a standard of valuation in such cases (*vide* 61 Cal. 796 F. B. cited at p. 69 *infra*). Suits other than those mentioned in s. 7 cl. iv would fall under Sch. II, Art. 17 (6) if it is not possible to estimate at a money value the subject-matter in dispute in them. Such for instance are suits for partition between co-tenants, suits for registration of documents, suits for restitution of conjugal rights, etc. While in most provinces, the High Courts have not framed rules with regard to these classes of suits, which alone seem to be contemplated by s. 9 of the Suits Valuation Act, some courts have gone too far and have framed rules, with regard to suits which are specifically and clearly provided for in the Act itself. The Act provides a fixed fee for a suit to set aside an adoption or to establish an adoption (*vide* Art. 17 (v) and (iii) of the main Act) and the reason probably is that the Legislature thought that an *ad valorem* fee calculated on the value of the property affected by the suit would be a hardship. This fixed fee has been arbitrarily raised in Lahore and Oudh by rules being framed fixing the value in such suits at a particular amount (Rs. 200 in Lahore—Rs. 400 in Oudh), though there is no departure in principle from that contained in the Act itself. The Nagpur Court has gone one step further and directed an adoption suit should be valued at the market value of the property affected by the suit, subject to a minimum of Rs. 400 and *ad valorem* court-fees paid on it. In effect the rule provides that instead of a fixed fee of Rs. 10 (now raised to Rs. 15) prescribed in the Act for such a suit, an *ad valorem* fee has to be paid on the value of the property affected by the suit, subject to a minimum of Rs. 30. The validity of this rule has been called in question more than once and though there was some difference of opinion, the rule has been upheld by the Judicial Commissioner's Court of Nagpur (*vide* 43 I. C. 64; 1930 Nag. 23; 1930 Nag. 73). In this connection it may be worth while to note that the Legislature of the Central Provinces has re-stated the position as to the fees leviable in adoption suits by the amending Act of 1935. In view of this, the whole position may well be re-considered by the newly constituted High Court for the Province.

ment to permit the operation of the initiative and referendum, or the recall in any sense which would remove the intervention of the Parliament of the Commonwealth. It is, of course, perfectly legitimate to submit issues, such as the question of the adoption of compulsory service, to the people to decide, whereupon the Commonwealth Parliament might in the plenitude of its authority take such action as it thought fit.<sup>1</sup> But it is most doubtful whether the Parliament could ever bind itself to pass or repeal an Act which had been approved by referendum, leaving itself no freedom of action. The Canadian authority on the subject is indirect, and is far from conclusive even for a unitary Legislature,<sup>2</sup> and in the Commonwealth it may be pronounced inapplicable.

(k) *Trade and Commerce*

The doctrine of the reserved powers of the Commonwealth, now obsolete, insisted that the power to legislate on inter-State trade and external trade given to the Commonwealth reserved absolutely all regulation of intra-State trade to the States, and invalidated any Commonwealth legislation infringing this principle. It is clear that this doctrine cannot be invoked any longer,<sup>3</sup> and that invasion of the State sphere is legitimate, if essentially involved in the exercise of any federal power, just as it is in Canada. Similarly, the Commonwealth is not alone empowered to deal with inter-State or foreign trade, though the States are limited by their disability to impose customs duties, grant bounties, except as specially permitted, and by the prohibition of s. 92 to interfere with freedom of intercourse and trade between the States. It is further clear, also, in this differing from the United States constitution, that the Commonwealth can prohibit<sup>4</sup> no less than merely regulate, seemingly in this differing also from the Dominion.

Legislation under this power by the Commonwealth includes the *Sea Carriage of Goods Act*, 1904, and the new Act of 1924, the *Secret Commissions Act*, 1905, the *Commerce (Trade Descriptions) Act*, 1905, the *Australian Industries Preservation Act*, 1906-10,

<sup>1</sup> Cf. for a State case, *Taylor v. A.-G. of Queensland*, 23 C. L. R. 457.

<sup>2</sup> See above, p. 304.

<sup>3</sup> *Engineers' Case* (1920), 28 C. L. R. 129.

<sup>4</sup> Kerr, *Austr. Const.*, p. 114. For the sense of the term 'trade and commerce', see *W. & A. McArthur Ltd. v. State of Queensland* (1920), 28 C. L. R. 530, 546 ff.

## SECTIONS.

- (d) for an injunction ;
- (e) for easements ;
- (f) for accounts ;
- v. for possession of land, houses and gardens ;  
     Proviso as to Bombay Presidency ;  
     (e) for houses and gardens ;
- vi. to enforce a right of pre-emption ;
- vii. for interest of assignee of land-revenue ;
- viii. to set aside an attachment ;
- ix. to redeem ;  
     to foreclose ;
- x. for specific performance ;
- xi. between landlord and tenant.
- 8. Fee on memorandum of appeal against order relating to compensation.
- 9. Power to ascertain nett profits or market-value.
- 10. Procedure where nett profits or market value wrongly estimated.
- 11. Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.
- 12. Decision of questions as to valuation.
- 13. Refund of fee paid on memorandum of appeal.
- 14. Refund of fee on application for review of judgment.
- 15. Refund where court reverses or modifies its former decision on ground of mistake.
- 16. [*Repealed.*]
- 17. Multifarious suits.
- 18. Written examinations of complainants.
- 19. Exemption of certain documents.

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 CHAPTER III-A.

 PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF  
 ADMINISTRATION.

- 19-A. Relief where too high a court-fee has been paid.
- 19-B. Relief where debts due from a deceased person have been paid out of his estate.
- 19-C. Relief in case of several grants.
- 19-D. Probates declared valid as to trust-property though not covered by court-fee.

inroad on the State powers of taxation. Hence in *Peterswald v. Bartley*<sup>1</sup> the right to levy licence duties was recognized as appertaining to the States. In *R. v. Barger*<sup>2</sup> it was emphatically ruled by the High Court majority that an excise could not be imposed subject to a rebate conditional on the observance of satisfactory conditions of manufacture, but the validity of the case is not wholly certain since the decadence of the doctrine of reserved powers, though there seems to be a certain amount to be said for it, apart from that doctrine. As regards customs, it is clear that it can be supplemented by the power of taxation so as to cover a provision allowing a seller to add an increase of duty, and a buyer to deduce a decrease, after a bargain had been made.<sup>3</sup> It was pointed out that British practice allowed addenda of this kind to Customs and Excise Acts, thus meeting the requirements of s. 55 of the Constitution, which requires Taxing Acts to deal with their own subject alone. In November 1926 it was ruled that South Australia could not place a tax of 3d. a gallon on the sale of petrol or consumption of imported petrol, as these were virtually excise duties.

As regards taxation in general, it has been exercised by enacting income tax, land tax, estate duties, amusement tax, excess profits tax, and a tax of ten per cent. on notes of private banks, intended and effective as destroying their use. There can be no doubt that the motive of taxation or its effect must now be deemed irrelevant to the consideration of the validity of a tax. Thus in *Osborne v. The Commonwealth*<sup>4</sup> the Federal Land Tax was vainly objected to, because it was on the face of it rather a device for breaking up large estates, especially those of absentee owners, than a mode of raising revenue; the Court was clear that it was essentially an Act taxing land, so that motive or result was irrelevant. It ruled also that only one subject of taxation was dealt with, so that s. 55 was obeyed. In *Morgan v. Deputy Federal Commissioner of Land Tax*<sup>5</sup> it was held perfectly legitimate to provide that the shareholders in a company should be deemed to be joint owners of land held by the company, and to be liable, in respect of their ownership, to tax, and s. 55 was again vainly invoked against the Act. But

<sup>1</sup> (1903) 1 C. L. R. 497.

<sup>2</sup> (1908) 6 C. L. R. 41, 73, 74.

<sup>3</sup> *G. G. Crespin & Son v. Colac Co-operative Farmers*, 21 C. L. R. 205.

<sup>4</sup> (1912) 12 C. L. R. 321; cf. 36 C. L. R. 20. <sup>5</sup> (1912) 15 C. L. R. 661.

## CHAPTER VI.

## SECTIONS.

## MISCELLANEOUS.

31. Repayment of fees paid on applications to Criminal Courts.
  32. [*Repealed.*]
  33. Admission in criminal cases of documents for which proper fee has not been paid.
  34. Sale of stamps.
  35. Power to reduce or remit fees.
  39. Saving of fees to certain officers of High Courts.
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## SCHEDULES.

I. *Ad valorem* FEES.

TABLE OF RATES OF *ad valorem* FEES LEVIABLE ON THE  
INSTITUTION OF SUITS.

## II. FIXED FEES.

## III. FORM OF VALUATION.

ANNEXURE A.—VALUATION OF THE MOVEABLE AND IMMOVEABLE  
PROPERTY OF DECEASED.

ANNEXURE B.—SCHEDULE OF DEBTS, ETC.

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tinguished ; it is clear that there was no such authority for the form of taxation in that case as that in the case of estate duties. The system of death duties, it may be noted, is that duty is charged on all real estate, and on all personal estate in addition, of any testator dying domiciled in Australia, but on personal property in Australia only in the case of one not domiciled.

The income tax of the Commonwealth did not escape examination in *Harding v. Federal Commissioner of Taxation*,<sup>1</sup> where s. 55 was once more adduced to seek to discredit the tax on the score that one provision created an income of five per cent. of the value of property occupied rent free. This effort at narrowing the idea of one tax again failed.

The exemption in s. 114 of property of the Commonwealth from taxation by the States is exemplified in *Municipal Council of Sydney v. The Commonwealth*,<sup>2</sup> when the right of the Council to levy rates on Commonwealth property was negatived. It was held that, while the section permitted levy with the consent of the Parliament, that consent should be evidenced by an Act or an appropriation to meet the rates, and that, as the State could not levy, it could not empower a municipality to do so. On the other hand, in *D'Emden v. Pedder*,<sup>3</sup> the effort to say that imposing a stamp on a receipt was taxing the property of the Commonwealth was rejected, on the score that the receipt could hardly be taken to be property within the meaning of s. 114. As we have seen, efforts to make use of the power in favour of the States have been failures. In the case of the importation of wire netting for sale to farmers, and of steel rails for use on State lines alike, the High Court<sup>4</sup> denied exemption from the taxing power, though on the very unconvincing ground that the tax was imposed on importation, which on the American view is heretical. Similarly, as has been seen, the plea failed in the case of federal land tax levied on leaseholds held from the State.

#### (m) *The Execution of Federal Laws*

In 1925 the Federal Parliament was compelled to legislate<sup>5</sup> to provide for the appointment of Peace Officers to execute its

<sup>1</sup> (1917) 23 C. L. R. 119.    <sup>2</sup> (1904) 1 C. L. R. 208.    <sup>3</sup> (1904) 1 C. L. R. 91.

<sup>4</sup> *The King v. Sutton* (1907), 5 C. L. R. 789 ; *A.-G. for New South Wales v. Collector of Customs* (1908), 5 C. L. R. 818.

<sup>5</sup> *Peace Officers Act*, 1925, No. 12. See *Parl. Deb.*, 1925, pp. 1875 ff., 1950 ff., 1971 ff. It was carried under a declaration of urgency and allotment of time (p. 1978).

**Local Amendments.**—By the Devolution Act (XXXVIII of 1920) the various Provinces have been empowered to fix the Court-Fees in their respective provinces. By virtue of the said powers the various provinces have enacted several Amending Acts which have modified the main Act in varying degrees. S. 80-A of the Government of India Act lays down that the local legislature may repeal or alter any law of any authority in British India subject to the proviso therein contained. *In the goods of Thomas Williams*, 75 I. C. 466, it was held that the Bengal Court-Fees Act (IV of 1922) was not *ultra vires*.

### Extent of application.

(1) **British India.**—The Act extends to the whole of British India.

There is no definition of the expression in this Act. Consequently we have to turn to the General Clauses Act X of 1897. British India is defined by S. 3, cl. 7 of that Act as "All territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor-General of India or through any Governor or any other officer subordinate to the Governor-General of India."

Aden is within British India (Aden Laws Regulation, 1891, S. 2) but not Singapore (Straits Settlement Act, 1866, S. 1), nor the Civil Station at Wardhan, *Emperor v. Chiman Lal*, 17 I. C. 534; nor the Kathiawar States, *Hemchand v. Azam Sakar Lal*, 8 Bom. L. R. 129.

(2) **Certain specified areas.**—This Act has been declared to be in force—

- in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), s. 4 (1), Bur. Code;
- in British Baluchistan, by the British Baluchistan Laws Regulation (1 of 1890), s. 3, Bal. Code;
- in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (3 of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben. Code, Vol. I;
- in the sub-division of Angul, by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol. I.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) to be in force in the following Scheduled Districts, namely:—

- the District of Hazaribagh, *see* Gazette of India, 1881, Pt. 1, p. 507;
- the District of Lohardugga (now the Ranchi District, *see* Calcutta Gazette, 1899, I, p. 44; the District of Lohardugga then included the present District of Palauman, separated in 1894), *see* Gazette of India, 1881, Pt. I, p. 508;

decide for itself the merits of such an application, an opinion for which there seems to be no satisfactory ground of any kind. But it is clear, from experience in Queensland and Victoria,<sup>1</sup> that the best security for a State is a firm Government backed by legislation on the British model of 1920 (c. 55).

### § 6. *The Judiciary*

The ideal of a Court of Appeal for the Australian Colonies was mooted formally in 1849, when the Secretary of State meditated securing the presence of federal clauses in the Act of 1850 to create Victoria, and in 1870, as the outcome of a Commission in Victoria, it was further investigated, but the Imperial Government held that the matter was in no wise pressing. In the *Federal Council of Australasia Act*, 1885, nothing was inserted as to a Supreme Court, but in the 1891 Convention such a Court was taken for granted as essential, and thereafter formed the subject of elaborate investigation until its powers were finally embodied in the Constitution. Since then they have been explained, within the limits allowed by the *Judiciary Act*, by the *High Court Procedure Act* and the Rules of the High Court.

By s. 71 the federal jurisdiction of the Commonwealth is vested in a High Court, in such other Federal Courts as the Commonwealth creates, and in such State Courts as it invests with jurisdiction. Section 72 provides for tenure subject to removal on addresses from both Houses during the same session for removal on the ground of proved misbehaviour or incapacity, and this tenure applies to all federal justices. It follows, therefore, that the Inter-State Commission<sup>2</sup> and the Court of Conciliation and Arbitration<sup>3</sup> are not Courts of federal jurisdiction within the meaning of the Constitution, and cannot enforce their findings by injunction or otherwise, because in both cases

<sup>1</sup> See the *Public Safety Preservation Act*, 1923, No. 3292. For the police strike of November 1923, see *Round Table*, xiv. 385-91; as usual, the Federal Government was inactive. Contrast Canada in the case of Nova Scotia in 1924-5; c. 57 of 1924 lays down a simple procedure enabling a Premier to secure aid on repayment of cost, on the requisition of the Attorney-General to the district officer commanding, based on a notification of a judge of a superior, county, or district Court.

<sup>2</sup> *State of New South Wales v. The Commonwealth* (1915), 20 C. L. R. 54.

<sup>3</sup> *Waterside Workers' Federation v. J. W. Alexander Ltd.*, 25 C. L. R. 434.



**(3) Native States.**—The Governor-General in Council acting under the Foreign Jurisdiction and Extradition Act has passed orders in Council in his executive capacity applying the provisions of this Court-Fees Act to the Hyderabad Assigned Districts, the Hyderabad Residency Bazar Cantonment of Secunderbad and the Civil and Military Station, Bangalore.

In the State of Mysore this Act is in force by virtue of the provisions in the Instruments of Rendition, dated 1st March 1881, whereby the Acts then in force in the State were continued to be in force.

**(4) Military Courts of Requests.**—This Act does not apply to such courts. See Statement of Objects and Reasons.

**(5) Colonial Courts of Admiralty.**—Under the Colonial Courts of Admiralty (India) Act, 1891 (Act XVI of 1891) suits instituted in the Colonial Courts of Admiralty at Rangoon, Aden or Karachi State shall, unless the jurisdiction of the Courts is exercised in any manner relating to the slave trade, be leviable under Ch. III of this Act.

**(6) Certain other Acts.**—There are special provisions regarding Court-Fees in the Madras Hindu Religious Endowments Act, the Presy. Small Cause Courts Act, the Bengal Tenancy Act, the Land Acquisition Act, the Agra Tenancy Act, etc.

**History of legislation relating to the levy of Court-Fees.**—The origin of Court-Fees is succinctly set out in the report of the Commissioners appointed to consider the reforms of judicial establishments in the year 1856 as follows:—"No institution fee has ever been paid in the Sepreme Court, nor under the original system of Lord Cornwallis was there any such fee in the courts of the Company. The State defrayed the expenses of all the judicial establishments. An institution fee in the case of civil suits was first established by Bengal Regulation XXXVIII of 1795, not as a source of revenue, but as appears from the preamble to the Regulations, for the purpose of preventing vexatious litigation. By Bengal Regulation VI of 1797, the institution fees were converted into stamp duties. The preamble there assigns the same object, but adds also another reason that of increasing the public revenue. The last purpose is the only one mentioned in the Bengal Regulation I of 1814 which further regulates these payments." There were several Regulations and Acts relating to the Court-Fees in all the three Presidencies.

**Bengal.**—In Bengal there were Bengal Regulation X of 1797, II of 1798, I of 1814, XXVI of 1814, IV of 1816, XV of 1816, XIV of 1824, II of 1825 and the Consolidating Bengal Regulation X of 1829. They were followed by Regulations VIII of 1831 and XV of 1845.

**Bombay.**—In Bombay, the Regulations were VIII of 1802, XIV of 1815, VII of 1816, IV of 1817, I of 1827 and XVIII of 1827.

diction in matters arising under the Constitution or involving its interpretation ; of Admiralty and maritime jurisdiction ; trials of indictable offences against the Commonwealth laws ; and matters involving the powers *inter se* of the Commonwealth and a State or States, or of two or more States. The Court has also authority under s. 33 of the *Judiciary Act* to make orders, or direct the issue of writs commanding a Federal Court to act ; prohibiting a Court from exercising federal jurisdiction which it does not possess ; commanding federal officers to act ; of ouster of office ; of *mandamus* ; and of *habeas corpus*. The State Courts are invested normally with concurrent federal jurisdiction, but this does not apply to cases of treaties ; suits between States or the Commonwealth and a State ; applications for writs of *mandamus* or prohibition against federal officers ; State Supreme Courts—not others—are excluded from jurisdiction in cases involving the question of the powers *inter se* of the Commonwealth and a State, or two or more States.

The Court is not vested with power to decide finally, or in any legal sense, hypothetical questions which cannot be brought under the conception of the judicial power as expressed in the Constitution.<sup>1</sup>

The Constitution gives jurisdiction to the Court over both States and Commonwealth in regard to disputes between them, such disputes being such as appertain to the sphere of private rights, e. g. ownership of property or tort, or neglect of some duty laid down in the Constitution.<sup>2</sup> Thus the Court has jurisdiction if a State seeks to raise forbidden taxes or maintain military forces, while equally the Court would have jurisdiction at the suit of a State over the Commonwealth if it taxed State property. Further, the Attorney-General can bring an action in the High Court to have declared invalid any State law which violates the Constitution. Suits between residents of different States are not available<sup>3</sup> when one of the residents is a corporation, and residence in different States must be proved strictly.<sup>4</sup> This jurisdiction is indeed manifestly otiose, and accidental

<sup>1</sup> *In re Judiciary Act* (1921), 29 C. L. R. 257 ; *Luna Park Ltd. v. Commonwealth* (1923), 32 C. L. R. 596.

<sup>2</sup> *The Commonwealth v. New South Wales* (1923), 32 C. L. R. 200 ; *South Australia v. Victoria* (1911), 12 C. L. R. 667.

<sup>3</sup> *Australasian Temperance &c. Society v. Howe* (1922), 31 C. L. R. 290.

<sup>4</sup> *Dahms v. Brandsch*, 13 C. L. R. 336.

apply the language of the section to the facts before it. *Majidan v. Sabir*, 107 I.C. 674; *Thurkaji Rao Hulker v. Sowkabai*, 31 Bom.L.R. 7; *Tata Hydro Electric Agency, Ltd. v. Commissioner of Incometax, Bombay*, 58 Bom. 361.

**(3) General and particular intention.**—It is a well-established principle that where a general intention is expressed by the legislature and also a particular intention which is incompatible with the general one, the particular intention is considered an exception to the general rule. This rule applies where the general and special provisions are contained in the same statute or different statutes. *Khangul v. Lakha Singh*, 1928 Lah. 609 (F. B.); *Bahadur Lal v. Judges of Allahabad High Court*, 55 All. 432 (F. B.)

**(4) All words to be given effect to.**—A construction which would leave without effect any part of the language should be rejected unless justified. *Maxwell's Interpretation of Statutes*, 6th Edn., page 33. See also *Vasanbai v. Radhubai*, 108 I. C. 657.

**(5) Construction leading to absurdity to be avoided.**—Construction leading to absurdity must be avoided. That construction alone should be adopted which is in consonance with common-sense and which does not lead to absurd results or enormous difficulties. *Moiden Pichai v. Tinnevely Mills Co.*, 1928 Mad. 571; *Subramania Aiyer v. Swaminatha Chettiar*, 1928 Mad. 746.

**(6) Anomalous construction to be avoided.**—Construction leading to anomaly to be avoided. *Dial Singh v. Gurudwara*, 9 Lah. 619.

**(7) Harmonious construction.**—The section should be harmoniously construed. It is the duty of the Court to construe the provisions of the statute in such a manner as not to allow one provision to stultify the other and, if possible, the provisions of one section should be read as a qualification of the other, so that some effect furthering the intention of the legislature may be given to each. *Emperor v. Jaid*, 111 I. C. 865 = 22 S. L. R. 349; *Bimleshwari Prasad Upadhyay v. Krishna Murari*, 1934 Oudh 145.

**(8) Courts should not supply omissions.**—Courts should not supply omissions in an Act. They cannot add or amend the defective phraseology of the legislature and by construction make up the deficiencies left there. *Gurudial Singh v. Central Board*, 1928 Lah. 337.

**(9) Previous state of the law.**—It is a sound rule of interpretation to take the words of the statute as they stand without any reference to the previous state of the law on the subject. Where it is impossible to arrive at a conclusion without considering what the law was previous to the particular enactment the prior state of the law might be referred to. *Abdul Rahim v. Syed*, 55 Cal. 519 (P. C.) and *Brojo Lal v. Budhnath*, 55 Cal. 551.

**(10) Reference to English law.**—See *Mussamat Ramanandi v. M. T. Kalavathi*, 7 Pat. 221 = 1928 Pat. 2. Where there is a

beyond the jurisdiction of the Court of Conciliation and Arbitration.<sup>1</sup> This agrees incidentally with the High Court's ruling on appeal in *Clancy v. Butchers' Shop Employees*<sup>2</sup> that a State Act was inadequate to prevent prohibition for excess of jurisdiction being available to the Supreme Court against the Arbitration Court of that State. Prohibition will lie to any tribunal, but not to a mere advisory body such as the Board, under the Immigration Act, which guides the Minister in his decisions as to deportation of immigrants.<sup>3</sup> In its jurisdiction the Court will not deal with hypothetical cases, where its decisions will have no immediate concrete results. But an allegation that the plaintiff's trade will be ruined if an Act of a State is valid,<sup>4</sup> or a trespass on the legislative sphere of the Commonwealth, are cases appropriate for decision.<sup>5</sup>

As regards appellate jurisdiction, the Court is given, subject to such exceptions and regulations as Parliament may provide, power to hear and determine appeals from all judgements, decrees, orders and sentences of any Justice exercising the original jurisdiction of the Court ; or any other Federal Court<sup>6</sup> or Court exercising federal jurisdiction ; and of the Supreme Court of any State or any Court of a State from which, at the establishment of the Commonwealth, appeal lay to the Crown in Council. In the case of appeals from the High Court itself there is no restriction, save that the leave of the Court below is required for an appeal as to costs, and of the High Court in criminal cases. From the Supreme Court of a State in all instances, whether federal or not, an appeal lies when the amount at issue is of at least £300 in value ; or affects status under the laws as to aliens, marriage, divorce, bankruptcy and insolvency ; or when leave is given by the High Court ; or when the decision is one in a matter pending in the High Court, and is pronounced under the federal jurisdiction of the State Court. In the cases where State Courts other than the Supreme Court exercise federal jurisdiction under the powers conferred by s. 39 of the *Judiciary Act*, an appeal lies to the High Court in every case

<sup>1</sup> *Tramways Case* (No. 1), 18 C. L. R. 54.      <sup>2</sup> (1904) 1 C. L. R. 181.

<sup>3</sup> *R. v. Macfarlane* (1923), 32 C. L. R. 518.

<sup>4</sup> *W. & A. McArthur Ltd. v. State of Queensland* (1920), 28 C. L. R. 530.

<sup>5</sup> *The Commonwealth v. Queensland* (1920), 29 C. L. R. 1.

<sup>6</sup> e. g. the Central Court of New Guinea ; *Mainka v. Custodian of Expropriated Property* (1924), 34 C. L. R. 297 ; but see 37 C. L. R. 432.

the same words occurring in the Court-Fees Act and the Limitation Act, it is not proper to call in the latter in aid of the construction of the former. The subject of Court-fees has no real or necessary connection with the limitation of suits and proceedings to which the other is exclusively devoted. See *Assan v. Pathumma*, 22 Mad. 494, where Justice Subrahmaniam Aiyar has observed as follows:—"No doubt it is true that in construing an Act provisions of other statutes which are in *pari materia* may be referred to. But when the two enactments are not in *pari materia*, how can one be taken to control and qualify the other? Nothing can be more dangerous to construe one statute by another especially when we consider the mode in which the statutes are framed at the present time." See also *Knowles & Sons v. Lancashire Yorkshire Railway Co.*, L. R. 14 App. Cases 248, where Lord Halsbury has observed thus: "I do not think one gets any help from the construction of other statutes passed at different times and in pursuance of different lines of thought." One fiscal enactment cannot be construed by way of analogy of another fiscal enactment. *In re Sarojanashini*, 20 C. W. N. 1125.

**(16) Stare decisis.**—Where for a series of years a law which imposes a heavy tax upon litigation has received a particular interpretation in favour of the suitor and a course of practice has prevailed for years throughout the whole country in accordance with that interpretation, courts of justice ought to be slow in changing that interpretation or course of practice to the prejudice of the suitor. *Ijjathulla v. Chandra Mohan*, 34 Cal. 945; *Bidhata Ray v. Ram Charitra Ray*, 12 C. W. N. 37. It is a well settled principle of interpretation that Courts in construing a statute will give much weight to the interpretation put upon it at the time of its enactment and since by those whose duty it has been to construe, execute and apply it. *Baleswar v. Bhagirathi*, 35 Cal. 701. Decisions which are not clearly erroneous and mischievous and which have affected the conduct of the community for a long time should not easily be overruled. *Kedar Nath v. Maharaja Manendra Chandra Nandi*, 11 C. L. J. 106. But practice cannot make lawful that which is unlawful however long it may be. *Buvasi Lal v. Dayasankar*, 13 C. W. N. 815.

Procedure followed by Revenue authorities is not binding on Civil Courts. *Killing Valley Tea Co. v. The Secretary of State*, 32 C. L. J. 421.

**(17) Hardship of literal construction.**—Edge, C. J., has observed as follows in *Balkaram v. Govindanath*, 12 All. 129: "We cannot allow any question of hardship to influence us in applying the principles of construction to Acts of the Legislature where the wording of those Acts is plain and unambiguous. We are not responsible for those Acts and to put upon them a construction different from that which according to the principles of construction upon which a Court of Justice must act, they bear, would be to depart from our duty as judges and to arrogate to ourselves the power and functions of the legislature. We have to construe the Acts of legisla-

made the Constitution and federal laws binding on all States and Courts and people, but under the *Judiciary Act* their federal jurisdiction became limited and defined. But the Parliament made one illegitimate attempt; it enacted in s. 39 (2 a) that every decision, in its federal jurisdiction, of the Supreme Court, or any Court in a State from which an appeal lay at the establishment of the Commonwealth to the Crown in Council, should be final and exclusive, except so far as an appeal might be brought to the High Court. There is no doubt that this cannot be held to bar the right of appeal to the Privy Council in all such cases, both by special leave—as indeed the High Court was driven to admit—but also as of right, under the Orders in Council. The Privy Council, by hearing *Webb v. Outtrim*<sup>1</sup> and holding that the right of appeal there was valid, has proved, if argument were needed, that from a State Court, whatever the jurisdiction, appeals lie under the Orders in Council, whatever the *Judiciary Act* prescribes, and an attempt by Mr. Deakin in 1910 to induce the Imperial Government to alter the Orders in Council so as to make them apply only to State jurisdiction was unsuccessful, the President of the Council agreeing that to do this would be to violate the constitutional and legal position.

An analogous question is whether the Parliament could, if it wished, deprive as suggested in *Hannah v. Dalgarno*<sup>2</sup> the High Court of appellate jurisdiction in federal cases from the Supreme Courts, despite the proviso above cited of s. 73, on the score that federal jurisdiction being new, no appeal from it did exist at the establishment of the Commonwealth. The contention appears unsound, but the matter is little likely to be tested practically.

On the other hand, the High Court has, on the analogy of the Privy Council's action, declined to admit electoral appeals from a Court of disputed returns,<sup>3</sup> from a judge as a *persona designata* under the South Australian *Land Clauses Consolidation Act*, 1881,<sup>4</sup> or the Court of Industrial Arbitration in Queensland.<sup>5</sup>

<sup>1</sup> [1907] A. C. 81; *contra*, 35 C. L. R. 69; 37 C. L. R. 393.

<sup>2</sup> (1903) 1 C. L. R. 1.

<sup>3</sup> *Holmes v. Angwin* (1906), 4 C. L. R. 297. So in Canada, *North Huron Election Case* (1925), 29 O. W. N. 277.

<sup>4</sup> *C. A. Macdonald Ltd. v. South Australian Railways Commissioner* (1911), 12 C. L. R. 221.

<sup>5</sup> *Mutual Life and Citizens' Assurance Co. v. Thiel* (1919), 27 C. L. R. 187.

cannot be construed as a limitation upon the exercise of the powers given by the express terms of the Act. *Abdul Rahim v. Bombay Municipal Commissioners*, 42 Bom. 462.

(3) **Marginal notes.**—The side note although it forms no part of the section is of some assistance inasmuch as it shows the drift of section. Per Collins, M. R., in *Bushell v. Hammond*, (1904) 73 L. J. K. B. 1005. See also *Lahore Bank v. Kidarnath*, 31 I. C. 146; *Ramsaran Das v. Bhagvat Prasad*, 1929 All. 53; *Emperor v. Ismail Sayed Sahib*, 57 Bom. 537 (F. B.).

Reading of a section of a Statute by referring to the marginal note is not a legitimate canon of interpretation. *In re P. Natesa Mudaliar*, 51 M. L. J. 704; *Corporation of Calcutta v. Kumar Arun Chandra Singh*, 60 Cal. 1470.

(4) **Proviso.**—The proviso is part of the section to which it is attached, but it is something subordinate to the main clause and as a general rule what is contained in the proviso need not be imported by implication into the clause which would tend to extend its scope beyond what is warranted by the natural meaning of the words. *Mrs Annie Besant v. Government of Madras*, 39 Mad. 1085; *Zamindar of Challapalli v. Sonayya*, 39 Mad. 341. A Proviso cannot extend substantive provision, *Ramchander v. Gowri Nuth*, 53. C. 492.

(5) **Punctuation.**—Punctuation must be taken into consideration in construing an Act of the Indian Legislature. *Taylor v. Breach*, 36 Bom. 186; *The Secretary of State v. Kale Khan*, 37 Mad. 113.

(6) **Comma.**—It is not part of a statute. *Lewis Pugh v. Ashutosh*, 1929 P. C. 69.

(7) **Schedules.**—The schedules annexed to an Act and the headings under which they are placed are parts of the enactment but they are not to be taken into consideration if the language of the enactment is clear. *Altap Ali v. Jamsur Ali*, 93 I. C. 909 = 1926 Cal. 638.

## Construction of the Court-fees Act.

(1) **A fiscal enactment.**—The Court-Fees Act being a fiscal enactment ought to be literally construed. *Subramanya Ayyar v. Rama Ayyar*, 54 M. L. J. 67. It must be construed strictly and in favour of the subject. *Sri Krishnachandra v. Mahabir Prasad*, (1933) A. L. J. 673 = 1933 All. 488 (F. B.); *Beliram v. Isar Doss*, 8 Lah. 730 = 1928 Lah. 113. It is essentially a fiscal enactment. Its primary object is to protect the revenue and not to coerce the subject. *Chandramani v. Basdeo Narain*, 49 I. C. 442. The Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. *Mahomed Elliyas v. Rahima Bibi*, 56 M. L. J. 302 = 1929 Mad. 191. The enactment should be construed strictly and precisely. *Emperor v. Soddanand*, 8 Cal. 259; *Sirdar v. Ganapath*, 17 Bom. 56; *Rustomi v. Kala Singh*, 43 I. C. 383; *Manendra v. The Secretary*

public importance or of a very substantial character'. But, even if a case be of a substantial character, of public interest, and involve an important question of law, the High Court, like the Privy Council, will not grant leave if the decision of the Court below appear manifestly sound,<sup>1</sup> or an abortive step to appeal to the Privy Council has been taken.<sup>2</sup>

The effect of the *Judiciary Act* as regards appeals from State Supreme Courts as of right is that the limit of value of the matter in dispute is fixed at £300, while in the Orders in Council for the appeal from the States to the Privy Council it is normally £500. There is a possibility of alternative appeals in each case of a decision of a State Court in the exercise of its jurisdiction Federal or State, and both sides might appeal, one to the Privy Council, one to the High Court, as has happened in Canada.<sup>3</sup> The High Court follows much the same principles as the Privy Council in deciding the issue what makes a value of £300; e. g. a defendant who had only been ordered to pay £100 cannot appeal as of right,<sup>4</sup> nor a plaintiff who has been awarded £500 out of a claim of £600.<sup>5</sup> An appeal lies from a State Supreme Court in a case of *habeas corpus*.<sup>6</sup> In *In re McCawley*<sup>7</sup> the Court held that it could not regard as a judgement a refusal of the Supreme Court of Queensland to admit as a member of that Court Mr. McCawley, whose commission was ruled by the Court illegal. The Privy Council, on the other hand, in its wider power, heard the appeal and ruled that Mr. McCawley had been duly appointed. The High Court cannot hear new evidence, but may remit the matter to the Court below to take evidence afresh; it cannot, moreover, set up a new case for a party not suggested in the Court below. The provision made by the *Judiciary Act* authorizing the High Court to require execution of its judgements on appeal by the Supreme Courts is valid, and is available to forbid the Court below to grant an adjournment or stay of execution, pending appeal to the Privy Council, even

<sup>1</sup> *Ex parte Spencer*, 2 C. L. R. 250; *John v. City &c. Society*, *ibid.* 186.

<sup>2</sup> *Smith's Weekly Publishing Co. v. Myerson* (1924), 34 C. L. R. 141.

<sup>3</sup> Clearly, in such a case, proceedings would be stayed in the inferior Court, if need be.

<sup>4</sup> Cf. Kerr, *Austr. Const.*, pp. 265 ff.

<sup>5</sup> *Jenkins v. Lanfranchi* (1910), 10 C. L. R. 595.

<sup>6</sup> *A.-G. for the Commonwealth v. Ah Sheung* (1907), 4 C. L. R. 949.

<sup>7</sup> (1918) 24 C. L. R. 345; 28 C. L. R. 106 (P. C.).

<sup>8</sup> *Bayne v. Blake*, 5 C. L. R. 492; *McBride v. Sandland*, 25 C. L. R. 389.



that a taxing Act is to be construed differently from another Act. The duty of the Court is in my opinion in all cases the same whether the Act to be construed relates to taxation or to another subject, viz., to give effect to the intention of the Legislature as that intention is to be gathered from the language employed having regard to the context in connection with which it is employed. The court must no doubt ascertain the subject-matter to which the particular tax is by the statute intended to be applied, but when once that is ascertained it is not open to the Court to narrow or whittle down the operation of the Act by seeming considerations of hardship or of business convenience or the like. Courts have to give effect to what the Legislature has said.' But the general consensus of opinion in India seems to take a view favourable to the subject and give as lenient a construction as possible to fiscal enactments.

**(4) Whole Act to be considered.**—The true mode of interpreting a statute like the Court-Fees Act which has been repeatedly amended is not to consider individual sections but to take them as a whole and to give effect to the legislative intent upon a particular matter. *In the goods of Harriot Kerr*, 18 C. L. J. 308 = 21 L. C. 502.

**(5) Special provision applicable in preference to general.**—In such an Act as the Court-Fees Act, if there is a special provision which applies to a particular case then that special provision must be applied by the court rather than some general classification in which the suit may also be included which may be more favourable to the plaintiff. *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurti*, 63 M. L. J. 764 = 1932 Mad. 605.

**(6) Method provided by the Act.**—Where there is in the Act itself a special rule as to valuing suits for court-fees, that method should be followed. *Venkata Narasimha Raju v. Chandrayya*, 53 M. L. J. 267 = 1927 Mad. 825.

**(7) Preamble.**—The Court-Fees Act has no preamble. Justice Mahmood observes in *Balkaran v. Govindanath*, 12 All. 129: "I had difficulty in considering the Statute, Act VII of 1870, known as the Court-Fees Act which begins without a preamble and leaves it to the judges to decide what its objects were and to gather those objects from the enacting clauses." This echoes the sentiment expressed by Lord North in *Wigram v. Ryer*, 36 Ch. Dn. 17: "It is a very lamentable way of legislating that we should be driven to get at the meaning of Acts by removing difficulties by construction rather than that the intention of the legislature should be clearly expressed on the face of the Act."

**Object and scope of the Act.**—The object of the Act is to lay down rules for the collection of one form of taxation and that is also the scope of the enactment. *Mahomed v. Nabian Bibi*, 8 All. 282. This Act has no preamble whereby its purposes can be ascertained. *Gavaranga v. Botokrishna*, 32 Mad. 305 (F.B.). Still the Court-Fees Act is, as its name imports, an Act primarily

the State. Section 59 again gives the High Court jurisdiction in suits by one State against another, and ss. 64 and 65 provide that in suits of this kind the rights of the parties and the remedies shall be as nearly as possible the same as in a suit between subject and subject, save that execution shall not issue against the Commonwealth or a State.

The effect of these remarkable provisions is illustrated by *Baume v. The Commonwealth*,<sup>1</sup> where it was held that a subject has the right to sue the Commonwealth in tort for any wrongful action, and not, as in England,<sup>2</sup> merely the individual offender, the Crown being exempt under the maxim, 'the Crown can do no wrong'. Moreover, the Commonwealth may be required to answer interrogatories and make discovery of documents as if a private litigant. Moreover, in *Marconi's Wireless Telegraph Co. Ltd. v. The Commonwealth*<sup>3</sup> it was ruled that it was not sufficient for the Postmaster-General to object to inspection demanded by the company in order to decide if there were infringement of its patents, on the score of injury to the interests of the Commonwealth, but that the Court was entitled to decide if there was any probability of injury, and, in the absence of any *prima facie* evidence, it did order inspection. And when the Commonwealth desired to appeal to the Privy Council, it granted a stay only on terms that the Commonwealth should be liable for any loss resulting from the stay, if the case went against it.<sup>4</sup>

Under a State Act, *Claims against the Government and Crown Suit Act*, 1912, of New South Wales, provision is made for the appointment of a nominal defender to represent the Government. In *Williams v. Attorney-General for New South Wales*<sup>5</sup> an effort was made and held valid by the High Court for the Attorney-General to seek to establish a trespass by the Crown, though it was ruled that the trespass, the proposal to divert Government House from the purpose of a residence for the Governor, was not a trespass, there being no trust or charitable dedication established, and the management of the waste lands of the Colony being entrusted to the Crown in its right of the

<sup>1</sup> (1906) 4 C. L. R. 97. Contrast *Raleigh v. Goschen*, [1898] 1 Ch. 73.

<sup>2</sup> *Tobin v. The Queen*, 16 C. B. (N. S.) 310; *Entick v. Carrington*, 10 St. T. 1030; 43 T. L. R. 106, 733.

<sup>3</sup> (No. 2) 16 C. L. R. 178.

<sup>4</sup> (No. 3) 16 C. L. R. 384; cf. 36 C. L. R. 378. <sup>5</sup> 16 C. L. R. 404.

The procedure to be followed when a plaint or a memorandum of appeal is filed in a court other than a Chartered High Court or a Presidency Small Cause Court is as follows: "The court will first of all decide into which of the various classes enumerated in schedules I and II the document falls. This has some times been called deciding the category of the suit. The process involves the construction of the plaint, and a determination of the real relief prayed for. It is essentially judicial and requires the court to be astute to see that the reliefs are not so cast as to secure an evasion of the Court-Fees Act. A familiar instance is when declarations are only asked, when consequential relief is the real claim. The court will then proceed to see whether the proper fee is a fixed fee under Schedule II or an *ad valorem* fee under Schedule I. No question of valuation arises if the fee is a fixed fee; but if an *ad valorem* fee is leviable then the court will proceed to value the subject-matter or the subject-matter in dispute, or fix the amount of the relief claimed according to rules for computation set out in ss. 7 and 8 of the Act. If a local or further investigation is necessary, the court may proceed under s. 9. This computation is the valuation referred to in s. 11 of Chapter III and the court's adjudication on a question relating thereto is final in respect of a plaint or memorandum of appeal under the first clause of s. 12."

**Retrospective effect :—**Retrospective operation ought not to be given to a statute unless the intention of the legislature that it should be so construed is expressed in plain and unambiguous language. *Young v. Admas*, 1898 A. C. 469. See also *Hurenda Kumara Rai v. Secretary of State*, 1928 Cal. 808; *Pramothanath Pal v. Saurav Dosi*, 47 C. 1108. Grant of Probate for example is governed by the law in force at the time of the original grant, and is not subject to any higher rate introduced by interim legislation. *Swarnamayi v. Secretary of State for India*, 22 C. L. J. 370.

**(1) Amendment of the Act.**—Where it was notified that a new scale has been prescribed for court-fees for suits filed on the original side of the High Court of Madras to come into force from the date of publication in the Fort St. George Gazette, and the notification was received in the office at 5 P. M. after office hours the question arose for consideration whether the new scale of fees applied to plaints filed on that date. It was held that it did. *In re Court-fees* O. S. 513/32 and others, 46 M. 685.

For the effect of amendment of the Act between the date of decree and application for review, see commentaries under that heading under Sch. I, Art. 5.

**(2) Defective presentation of appeal.**—Where a memorandum of appeal was returned for want of a copy of the decree appealed against and the Court-Fees Act was passed meanwhile the fee payable is under that Act. *In re Sreenath*, 7 W. R. 462.

Where an appeal was improperly presented during vacation, the same will be deemed to have been presented on the reopening day and

§ 7. *Finance and Trade*

The revenues of the Commonwealth are constituted into a Consolidated Revenue Fund charged with the cost of collection and thereafter with the expenditure of the Government, with the usual provision that no appropriation can be made from the Treasury except under a law. There were also the usual transitory provisions regarding the transfer of State officers to the Commonwealth, and their pensions on ultimate retirement, to which the States were to contribute, compensation at State expense to officers retired on federation, &c., over which disputes as to pension contributions have not been rare.<sup>1</sup> Elaborate provision was made under s. 85 as to the taking over by the Commonwealth of property used exclusively by the States in respect of transferred departments and of other property not exclusively so used. The question of fixing the compensation to be paid caused great difficulty, the Commonwealth being given power to legislate to decide the question, but no such legislation has been passed. Ultimately, it was agreed to value the properties, and the Commonwealth undertook payment of interest on the amount so arrived at.<sup>2</sup>

The Constitution provided for the imposition within two years of uniform duties of customs, in addition to transferring forthwith the control of customs and excise, and of the payment of bounties to the Executive Government. It also provided for the annual payment to the States by the Commonwealth of three-quarters at least of the net produce of customs and excise for a period of ten years. On the imposition of uniform duties of customs, the power of the Commonwealth as to customs and excise and the grant of bounties was made exclusive, subject to the rule (s. 91) that a State may grant a bounty on mining for gold, silver, or other minerals, and, with the permission by resolution of both Houses of Parliament, may give bounties on the production and exportation of other products. Further, on the imposition of uniform duties (s. 82), trade, commerce, and intercourse among the States are made

<sup>1</sup> *Willis v. Mackray*, [1910] A. C. 476; *New South Wales v. Commonwealth*, 6 C. L. R. 214; *Manton v. Williams*, 4 C. L. R. 1046; *Greville v. Williams*, 8 C. L. R. 760; *Cousins v. Commonwealth*, 3 C. L. R. 529; 36 C. L. R. 585.

<sup>2</sup> Cf. on the cost of federation, *Commonwealth Parl. Pap.*, 1910, No. 62; *Tasmania Parl. Pap.*, 1910, No. 50.

- (c) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf.

#### COMMENTARY.

**Previous law.**—The present s. 2 was added by s. 2 of the Court-Fees (Amendment) Act, 1901 (10 of 1901). The original section relating to repeal of enactments was repealed by the Repealing Act, 1870 (14 of 1870).

**Local Amendment.**—A new section has been substituted for this section by the Bengal Court-fees Amendment Act (VII of 1935) See appendix.

**The Provinces specified in the section.** There is no territory under the administration of a Lieutenant Governor of Bengal now. In lieu of that, we have the Bengal Presidency and the Province of Bihar and Orissa. North West Provinces and Oudh are now known as the United Provinces of Agra and Oudh, and the Lieutenant-Governor and Chief Commissioner as the Lieutenant-Governor of those provinces. See Proclamation No. 596 P., dated the 22nd March, 1902, Gazette of India, 1902, Pt. I, p. 228, and the United Provinces Designation Act, 1902 (7 of 1902). In the Punjab there are two Financial Commissioners.

**Chief Controlling Revenue Authority.**—For such authority appointed for—

(1) the Island of Bombay, See Bombay Government Gazette, 1902, Pt. I, p. 35.

(2) Baluchistan, See Gazette of India, 1908, Pt. I, p. 389.

(3) the Assam Valley Districts and certain parts of the district of Cachar, See E. B. & A. Gazette, 1905, Pt. I, p. 5.

(4) Central Provinces—The Financial Commissioner is the authority in the C. P. & Berar. See C. P. Gazette, 1916, Pt. I, p. 1573.

**The Bengal Tenancy Act.**—Fees on processes issued under the Act are governed by the rules framed by the High Court of Calcutta under s. 20 of the Court-Fees Act.

## CHAPTER II.

### FEES IN THE HIGH COURT AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

3. The fees payable for the time being to the clerks and officers (other than the sheriffs and attorneys) of the High Courts established by Letters Patent, by virtue of the power conferred by

Levy of fees in High Courts on their original sides.

of the grant to each State of twenty-five shillings a head of population with £250,000 extra to Western Australia, the amount being taken from the others on a population basis. It was then decided to make the arrangement a part of the Constitution, while the Constitution was also to be altered to permit the taking over of the whole of the State debts. The necessary Bills passed both Houses, but, while the referendum of 1910 approved the provisions permitting taking over State debts, those as to the subsidies were rejected by New South Wales, Victoria, and South Australia, which objected to a permanent settlement, and the arrangement was ultimately passed as a simple Act, No. 8 of 1910. Section 96 of the Constitution permits the grant of aid specially to financially weak States, and in 1912 began the policy of thus aiding Tasmania, the Act No. 27 of 1924 providing for the payment of £55,000 over a period of five years in diminishing amounts, and also undertaking the payment of Commonwealth income tax on prizes won in the lotteries of Tasmania, whence that shameless State draws considerable profits, while the Federal post office refuses to deliver any letters to its authorities. Efforts to effect a new settlement of the issues have so far failed of success. The Federal offer of 1923 was to give up taxing incomes under £2,000, in return for cessation of the capitation allowances, certain special payments of £778,000 in all being made to Queensland, Tasmania, and Western Australia. This was viewed coldly by the States, which considered more favourably a suggestion that the Commonwealth should not tax individual incomes at all, and limit its tax on corporations to 2s. 6d. per £1. This proposal, however, was not definitely agreed upon, as New South Wales dissented, and in 1924-6 the matter was further postponed, and new proposals canvassed. On the other hand, it was agreed to arrange for State collection of Federal income tax,<sup>1</sup> save in the case of Western Australia, where Federal collection of State income tax already existed. It is clear that the finances of Western Australia are becoming more and more embarrassed, with annual deficits, totalling in 1925 almost six million pounds gross, while Tasmania cannot balance her budget even with the Federal grant. The raising of loans has been consolidated by

<sup>1</sup> The reform saved £200,000 a year and 600 officials to the Commonwealth, and different assessment forms to the public. See also App. D.

except those under ss. 44 and 55 of that Act): No. 21 (Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865). Thus it will be seen that even in the exercise of its ordinary original civil jurisdiction in the case of testamentary and certain classes of matrimonial jurisdiction, fees leviable under the Court Fees Act are applicable to the High Court. Subject to that exception, s. 3 of the Act is not a charging section like s. 4 that follows. For a learned discussion of this topic see the observations of Venkatasubba Rao, J., in *Abdul Hakim v. Chatteranada*, 1931 Mad. 457. See also *Maung Ba Thaw v. M. S. V. M. Chettiar*, 13 Rang. 156, holding that the Court-Fees Act does not apply to cases coming before the High Court in the exercise of its ordinary original civil jurisdiction or in the exercise of its jurisdiction as regards appeals from judgments passed in such cases.

**Mode of collection of stamps.**—Chap. V of this Act deals with the mode of levying fees. So far as the High Court is concerned, they are governed by the rules framed by the High Court under s. 15 of the Letters Patent and s. 107 of the Govt. of India Act with regard to suits on the original side of the High Court and appeals therefrom. The fees shall be collected in stamps. See s. 25 and also *Krishna Mohan v. Raghunandan*, 4 Pat. 336 = 1925 Pat. 392 and also *In re Blubaneswar Trigunant*, 52 C. 871 = 1925 Cal. 1201.

**Rules by Local Governments.** Under s. 27 the Government may make rules for regulating the supply, renewal, etc., of stamps, provided that in the case of stamps levied under s. 3, in a High Court, such rules are made with the concurrence of the Chief Justice of the High Court concerned.

**The Presidency Small Cause Courts Act (XV of 1882).**—The fees are levied under Chap. X of the Presy. Small Cause Courts Act by s. 77 thereof. Ss. 3, 5 and 25 of the Court-fees Act are made applicable also to such Small Cause Courts.

4. No document of any of the kinds specified in the first or second schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

Fees on documents filed, etc., in High Courts in their extraordinary jurisdiction:

or in the exercise of its jurisdiction as regards appeals from the [judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction: In their appellate jurisdiction:

regulations of trade, commerce, or revenue, is, as above noted, contained in s. 99.

It is definitely ruled by the High Court<sup>1</sup> that s. 92 is addressed to the States, not the Commonwealth, for whose action other provision exists under ss. 51 (ii and iii), 88, and 99. But there is no diminution thereby of the right of eminent domain, and while, so long as any owner has property, he is entitled to export it, if it is taken from him by State action, then his right to export, which is based on his property, is *ipso facto* determined; thus it was held in *State of New South Wales v. The Commonwealth*.<sup>2</sup> On the other hand, it is impossible for New South Wales to forbid the export of meat from the State; this judgement, asserted in *Foggitt Jones & Co. Ltd. v. State of New South Wales*,<sup>3</sup> was overruled, quite wrongly, in *Duncan v. State of Queensland*,<sup>4</sup> but was replaced in *W. & A. McArthur Ltd. v. State of Queensland*.<sup>5</sup> That State had endeavoured to prevent the sale of any goods therein at prices beyond certain maxima, and it was ruled that as regards goods sold for delivery from New South Wales the law was invalid. Similarly, it is clear that a State cannot impose disabilities on the sale of goods from without the State, as, for instance, by imposing a lower licence duty in respect of the sale of local wines. It cannot prohibit the entry of goods, save liquor (s. 113), but it might forbid the sale of all such goods, including those produced locally, if any, and it is rather a moot point whether it could not forbid even the possession of goods deemed to be dangerous, though imported from some other State. Nor is it easy to say whether a State, which taxes all local companies on the amount of capital paid up, is bound to exempt companies formed in other States which merely enter the State in the sense of being engaged in inter-State trade.

The question of discrimination in taxation was raised in the *Excise Tariff Case*,<sup>6</sup> for as the conditions under which exemption was to be accorded to manufacturers of agricultural implements were to be determined by different authorities in the several States, it was contended that there might thus be differentiation,

<sup>1</sup> *W. & A. McArthur Ltd. v. State of Queensland* (1920), 28 C. L. R. 530, 556.

<sup>2</sup> (1915) 20 C. L. R. 54.

<sup>3</sup> (1916) 21 C. L. R. 357.

<sup>4</sup> (1916) 22 C. L. R. 556.

<sup>5</sup> (1920) 28 C. L. R. 530.

<sup>6</sup> (1908) 6 C. L. R. 41.



- (3) Matrimonial (subject to certain exceptions—*vide* rules under s. 3 *ante*.)
- (4) Admiralty jurisdiction or
- (5) Ecclesiastical jurisdiction, *see Balkaran v. Govindanath*, 12 A. 129 (F. B.); *Krishna Mohan v. Raghunanda*, 4 Pat. 336=1925 Pat. 392.

**Testamentary jurisdiction.**—*See* commentaries under section 3.

**Sections 3 and 4.**—When section 3 speaks of “fees payable to clerks and officers” it is a fee payable to the Crown, and not any perquisites receivable by the officers. When a person tenders a stamped document to the Registrar of the High Court and asks him to enter his appeal it is clear he is within the meaning of the Act paying a fee to an officer of the High Court. 45 M. 849.

“The distinction between sections 3 and 4 must be carefully observed. Whereas the latter section prescribes the court-fee, the former, subject to an exception \* \* \* merely regulates the mode of collection \* \* \* In certain cases coming before the High Court the Court-Fees Act itself prescribes the fee leviable, S. 4, S. 3 Cl. 2. In other cases the Court-Fees Act lays down only the mode of collecting the court-fee, S. 3, Cl. 1. In the case of the Presidency Small Cause Courts also, it merely prescribes the mode of collecting the fee, S. 3, Cl. 3. *Abdul Hakim v. Chattanadha*, 1931 Mad. 457.

**Memorandum of appeal.**—It is a document under Schs. I and II of the Act, and this section read with s. 28, makes it clear that an insufficiently stamped memorandum of appeal cannot be received by the High Court. *Ram Sahay v. Kumar Lakshmi Narayan*, 42 I.C. 675; *Balkaran v. Govinda Nath*, 12 A. 129 (F. B.) The section is imperative, and such a defective memorandum should not be filed. *Lakshmi Narayan v. Chowdary*, 19 I. C. 971; *Khatumannessa Bibi v. Durjodhens Roy Choudhury*, 61 Cal. 663=38 C. W. N. 650=1934 Cal. 659. Where a memorandum of appeal is filed without a duly stamped decree appealed against, the appeal is liable to be rejected, if the deficiency is not made up within the period of limitation for filing the appeal, *Shabadal v. Hukam*, 1924 Lah. 401; *Imam Din v. Sahib Din*, 147 I. C. 343=35 P. L. R. 142=1934 Lah. 272.

There is a discussion of the question whether a memorandum of appeal is a document liable to be stamped under this section, in the Full Bench case of *Krishna Mohan v. Raghunandan Pandey*, 4 Pat. 336 at p. 349. Miller, C. J., observes as follows:—“A difficulty arises owing to the wording of Sch. I, Art. I which prescribes the stamp fee for, *inter alia*, a memorandum of appeal. The language of Art. I of Sch. I would appear to exclude such documents when presented in a High Court. The documents there mentioned are those presented in any Civil or Revenue Court *except those mentioned in s. 3*. The

One odd result comes from these provisions ; while the boundaries of a State are normally safeguarded, it can none the less by mere Parliamentary decision hand over any part of its territory, either for the purpose of being administered by the Commonwealth, or of being converted into a State. The Constitution clearly invalidates the application to the States of the *Colonial Boundaries Act*, 1895, a decision which seems to be open to serious exception,<sup>1</sup> and it remains uncertain how far the old provisions as to change of boundary contained in the Constitution Acts are in force. Thus the Act of 1850<sup>2</sup> allowed the Crown to alter the boundaries of New South Wales and Victoria ; that of 1855<sup>3</sup> permitted these Colonies by concurrent legislation to change their boundaries on the Murray River ; that of 1861<sup>4</sup> permits Governors of contiguous Colonies to settle the boundary in case of doubt, the boundary when proclaimed by the Crown to become binding ; and in 1890<sup>5</sup> power was given to annex one part of a Colony to another. There seems no conclusive reason to suppose that these Acts have been invalidated by the Commonwealth Constitution Act. It was indeed proposed in 1908 to use the Act of 1861 as a mode of deciding the disputed boundary between Victoria and South Australia, but Victoria declined ultimately to homologate the Premier's agreement to pay a certain sum in return for the surrender of the South Australian claim. The matter was ultimately decided by an action in the High Court, followed by an appeal to the Privy Council in favour of the boundary as established.<sup>6</sup>

The possibility of admission of New Zealand or Fiji as States may now be regarded as remote, but there is more likelihood of the creation of new States out of the great areas of Northern Australia, Queensland, and Western Australia. There have been agitations in northern and central Queensland,<sup>7</sup> in the south, north, and the goldfields of Western Australia,<sup>8</sup> and in September 1922 the movement took shape in New South Wales,

<sup>1</sup> Quick and Garran, *Const. of Commonwealth*, pp. 975 f.

<sup>2</sup> 13 & 14 Vict. c. 59, s. 30.

<sup>3</sup> 18 & 19 Vict. c. 54, s. 5.

<sup>4</sup> 24 & 25 Vict. c. 44, s. 5.

<sup>5</sup> 53 & 54 Vict. c. 26.

<sup>6</sup> *South Australia v. Victoria* (1911), 12 C. L. R. 667.

<sup>7</sup> See Bernays, *Queensland Politics*, pp. 506-34. These districts brought Queensland into federation, and the agitation for division has only been feebly present since.

<sup>8</sup> See Battye, *Western Australia*, pp. 424 ff., 447 f.

court, the discretion should be exercised on correct judicial principles, and not in a way so as to nullify the express provisions of s. 4 of the Act. *Khatumanessa Bibi v. Durjodhene Roy Choudhury*, 61 Cal. 663 = 38 C. W. N. 650 = 1934 Cal. 659. Where insufficient Court-fee is paid on a memorandum of appeal and the mistake is not a *bona fide* one, the question regarding the fee payable being very simple, time cannot be granted under s. 148, C. P. C., and the appeal is liable to be dismissed as time-barred. *Ram Rabhaya v. Vaid Prakash*, 1934 Lah. 424. See also under s. 6 on the point. O. VII, r. 11, C. P. C. does not apply to a plaint which bears no stamp. Such a plaint must be rejected in accordance with the provisions of ss. 4 and 6 of the Court-Fees Act. 1930 Nag. 224, *supra*.

**Received.**—A document is first received and then filed, exhibited on proof or recorded as the case may be. Under this section a court is not bound even to receive a defectively stamped document. *Ram Saehay v. Pandit Lakshminarayan*, 42 I. C. 675 = 3 Pat. L. J. 74.

**Furnished.**—Refers to the grant by Court. A succession certificate will not be issued unless the proper stamp is furnished. Though a will is proved, no probate will be issued till the requisite stamp duty is paid. *Alamelu v. Surya Prakasa Mudaliar*, 38 Mad. 988. For the meaning of the word 'Furnished' see *In the matter of Dampet*, 17 W. R. 489. See also commentaries under s. 6 *infra* regarding the meanings of the words, *filed*, *exhibited*, *furnished*, *recorded*, etc.

**Collection of deficit court-fee by stamp reporter after the appeal is admitted and registered.**—Where the law was changed after the decision of the Stamp Reporter as to sufficiency of stamp on a memorandum of appeal, by reason of a Bench decision of the High Court, the Stamp Reporter can take action to levy additional court-fee under the later decision even though the appeal has been admitted and registered already. *Sideshwari Prosad v. Ram Kumar Rai*, 12 Pat. 694 = 144 I. C. 684 = 1933 Pat. 234.

**Agency Appeals.**—An appeal to the Government of Madras under the Agency Rules framed under Act XXIV of 1839, is not chargeable under this Act. *Court-fee Reference*, 22 Mad. 162.

**Reference under Income-tax Act.**—As no mention of the court-fee payable on a reference under S. 66, Income-tax Act is to be found in Schs. I and II, Court-Fees Act, S. 4 of the Act does not apply to documents produced in a reference to the High Court under S. 66, Income-tax Act and therefore no court-fee is chargeable on such documents. *Commissioner of Income-tax, Bombay v. Khemchand Ramdas*, 145 I. C. 254 = 1933 Sind 148.

**Extraordinary Original Civil or Criminal Jurisdiction.**—Clause 13 of the Letters Patent deals with such Civil and Clause 24 deals with such Criminal jurisdiction respectively. The former gives the power to the High Court "to remove and try and determine as a court of extraordinary original jurisdiction any suit being or falling

begun in earnest by the effort of Queensland in April 1883, without Imperial authority, to annex all the island outside the portion already claimed by the Netherlands. The British Government ultimately consented in November 1884 to the declaration of a protectorate over the south-east part of the island, and in 1885 a Commissioner was appointed.<sup>1</sup> The indignation of the Colonies at German intervention was expressed at the Colonial Conference of 1887, at which the common-sense step was taken of the Colonies concerned agreeing to bear the expense of administration. Queensland, by Act No. 9 of 1887, provided a subsidy of £15,000, and accordingly annexation took place in 1888. The Imperial Government generously provided £52,000 for the cost of administration, and the local revenue, such as it was, was for a time returned *pro rata* of their contributions to New South Wales, Victoria, and Queensland. The administration was of Crown Colony type, with a nominee Legislative Council and an Executive Council of the ordinary type. The Lieutenant-Governor, however, corresponded through the Governor of Queensland, who thus was able to secure ministerial advice on the development of the territory, though the responsibility remained with the Secretary of State. On federation, letters patent of 18 March 1902 gave to the Governor-General the role hitherto occupied by the Governor of Queensland, and the Commonwealth provided £20,000 a year for the Colony. In 1905 the *Papua Act* was passed, and letters patent formally transferred the territory to the Commonwealth. The territory is not annexed to the Commonwealth, nor part of it; the case of *Strachan v. The Commonwealth*<sup>2</sup> shows the purely political character of the relation of the Commonwealth and Papua, and that officers of Papua did not become by the mere transfer officers of the Commonwealth, but to be made so must become so by Act.

The constitution given by the *Papua Act*, 1905-24, is of the old Crown Colony type. The Lieutenant-Governor is subject to the Governor-General acting on the advice of the Minister for Home and Territories; he is advised by an Executive Council of nine members, appointed by the Governor-General, eight officials and one non-official, who may be selected for

<sup>1</sup> *Parl. Pap.*, C. 3617, 3691, 3814 (1883); 3839, 3863 (1884); 4217, 4273, 4290, 4441, 4584 (1884-8); 4656 (1886); 5091.      <sup>2</sup> (1906) 4 C. L. R. 455.

under the extraordinary original jurisdiction of the Court conferred either by clause 13 of the Letters Patent or section 24, C. P. C. *Varadaraja Mudaliar v. Arumugam Pillai*, 22 L. W. 15=1925 Mad. 1216. Subsequently such rules were framed, but they were held to be *ultra vires*. See *Abdul Hakeem v. Chattanada Iyer*, 1931 Mad. 457 cited *supra*.

**5.** When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

Procedure in case of difference as to necessity or amount of fee.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, [*Registrar* (Madras)] whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first [*Chief* (Madras)] Judge of such Court.

The Chief Justice shall declare who shall be taxing-officer within the meaning of the first paragraph of this section.

#### COMMENTARY.

**Amendments.**—This section has been amended by the Madras Act V of 1922. The amendments have been noted in their appropriate places in the section itself.

**Scope of this section and s. 12 discussed.**—“ Clause (2) of s. 12 gives power to the High Court to determine the question of valuation in order to determine the proper fee payable upon a plaint or memorandum of appeal when the matter comes before it in Appeal, Reference or Revision. That clause relates only to a plaint and memorandum of appeal filed in the subordinate courts and does not relate to a memorandum of appeal filed in the High Court, and the power given thereunder can only be used when the question of valu-

(b) *The Federal Capital*

Under the Constitution the capital of the Commonwealth was to be in New South Wales, not nearer Sydney than 100 miles, and not less than 100 miles in extent. It was arranged in 1899 that, as part of the price to be paid for the assent of New South Wales to federation, it should not be further than necessary from Sydney.<sup>1</sup> In 1904 Dalgety was chosen by Act No. 7, but rejected in 1908 by Act No. 24, and after an exhaustive ballot in 1909 the Fisher Government passed an Act, No. 23, which fixed the site at Yass-Canberra, the name finally being fixed as Canberra. New South Wales surrendered the necessary area—some 900 square miles—by Act No. 14, including access to the sea at Twofold Bay. In 1915 the Commonwealth further acquired twenty-eight miles' area at Jervis Bay for possible use as a port, while the Australian Naval College was established at Captain's Point in the area.

By an Act, No. 25 of 1910, power was taken for the administration of the area, power to legislate being given to the Governor-General in Council. Ordinances so passed must be laid before Parliament not later than thirty days after, and may be disallowed on a resolution of either House proposed within fifteen days thereafter. The Commonwealth legislation as to conciliation and arbitration, secret commissions, and preservation of industries is applied. Land may not be disposed of in freehold; compensation for land acquired must be based on the unimproved value of land in October 1908 plus the value of improvements. The inferior Courts of New South Wales were accorded authority to exercise jurisdiction. In 1921, as the progress made by the two departments—Home and Territories, and Works and Railways—concerned was slow, an Advisory Committee was appointed, and in July 1923 the Parliament decided that in 1925, if possible, it should meet at Canberra. Work was then accelerated, and in 1924 Act No. 8 provided for the appointment of a Commission of three persons nominated by the Governor-General to undertake the municipal government of the area, to manage the land, and undertake a great programme of public works, tramways, gas, electric light, &c. In

<sup>1</sup> Turner, *Australian Commonwealth*, pp. 65-8, 73 f., 188 ff., 210, 244, 265, 268; *Parl. Pap.*, 1907-8, No. 18.

the officer appointed in this behalf by the High Court, say the Stamp Reporter, to see whether and what fee is payable under Ch. II upon a document filed, exhibited or recorded in, or received or furnished by the High Court. His duty is to see under what Articles of Schedules I and II, the aforesaid document falls. If it is a document with respect to which a fee is to be paid under the said Schedules it is his duty to find out the amount of the fee leviable upon it. Therefore with respect to a memorandum of appeal filed in the High Court, if the officer finds that the memorandum of appeal falls under Art. 1, Sch. I of the Act, he has to find out "*the amount or value of the subject-matter*" as stated in column 2 of the Article in order to determine the amount of fee payable under column 3 of that Schedule. In other words, he has to determine the value of the subject-matter in dispute, for without it, the amount of fee payable cannot be ascertained. Therefore the question of valuation is involved in the determination of the amount payable upon a memorandum of appeal. If the suitor contests the amount fixed by the Stamp Reporter, a difference arises between him and the officer whose duty it is to see that the proper fee is paid under Chap. II of the Court-Fees Act, upon the memorandum of appeal. When such a difference arises the question shall be referred to the taxing officer. This contest gives rise to an issue and that issue has to be determined by the Taxing-officer. The issue may be with respect to the nature of the document in order to find out in which category of the Schedule the document falls or it may be as to the value of the subject-matter in dispute upon which the amount of fee payable depends \* \* \*. The power of deciding the question given to the taxing officer implies the power to make an inquiry as to the amount payable upon the document, and if the amount of court-fee payable depends upon valuation, the taxing-officer has power to inquire into questions relating to valuation."

### **Decision of the Taxing Officer.**

(1) **Decision necessary.**—To attract the operation of the section, there must be a decision by the Taxing Officer. Otherwise objection as to sufficiency of court-fees can be raised at the trial. *Jugul Pershad v. Pashu Narayan*, 37 C. 914. Where there has been no decision by the taxing officer the court is not precluded from taking notice at the hearing of the deficiency in the stamp duty. *Kandunni Nair v. Ittumui Raman Nair*, 53 M. 540=1930 Mad. 597. Where the taxing officer declines to consider the question of court-fee and to decide it, his order cannot be considered to be one under s. 5, so as to operate as a bar to the question being considered by the Court. *Abdul Samad Khan v. Arjuman Islamia*, (1933) A. L. J. 1537. A decision cannot be implied from the mere admission of a memorandum of appeal without any controversy about the sufficiency of the court-fees. *Kasturi v. Dy. Collector, Bellary*, 21 M. 269.

(2) **Nature of order of Taxing Officer.**—It is neither a decree nor an order as defined by s. 2 C. P. C., nor is his decision a decision of a Civil Court. *Balkaran v. Gobinda*, 12 A. 129.

administration of the territory.<sup>1</sup> The consideration for the surrender was the relief of the State from the burden of debt contracted in respect of the territory, the understanding that the railway between Oodnadatta and Pine Creek, long contemplated, should be carried out, and that steps would be taken to complete the project of a transcontinental railway, which, running 1,051 miles from Port Augusta to Kalgoorlie in Western Australia, was completed in 1917. In that year the line from Pine Creek was extended to Emungalan on the Katherine River, while an Act of 1923 arranged for an extension of 160 miles, to Daly Waters. From 1 January 1925 the Oodnadatta line was taken over for working purposes from the Government of South Australia. The Act of acceptance further provided for freedom of trade between the territory and the Commonwealth.

The *Northern Territory (Administration) Act*, 1910, provided for the appointment of an Administrator with a merely advisory Council, and vested legislative power in the Governor-General in Council by ordinance, which must be laid before Parliament within fourteen days, and might be disallowed by either House on notice given not later than fifteen days thereafter. But the control of the Administrator was not extended to all departments; railways, posts and telegraphs, customs taxation, public works and quarantine were removed from his management and entrusted to Commonwealth departments; the judicial arrangements were supplemented by the establishment of a Supreme Court with original and appellate jurisdiction, from which appeal lay to the Supreme Court of South Australia. The usual rule of not parting with land on leasehold was laid down. But no great progress marked the taking over by the Commonwealth, and by 1926 the white population was put at 2,350, with about 1,050 non-Europeans, excluding aborigines, and 20,000 of the latter. It was determined, not unnaturally, to seek a new form of Government to aid development, in view in part of the grave

<sup>1</sup> Commonwealth *Parl. Pap.*, 1907, No. 4; 1909, No. 21; 1910, Nos. 22, 26; South Australia Acts Nos. 946 and 1029; *Council Deb.*, 1910, pp. 181 ff.; *Ass. Deb.*, 1910, pp. 597 ff.; Commonwealth *Parl. Deb.*, 1910, pp. 4423 ff., 4540 ff., 4633 ff., 4715 ff., 5010, 5094 ff., 5416 ff., 5552 ff.; Acts No. 20 and 27 of 1910; No. 24 of 1919; No. 11 of 1923. For its representation by a member without vote in the House of Representatives, see Act No. 18 of 1922; No. 21 of 1925. For appeal to High Court, see 37 C. L. R. 432.



(2) The decision is final both as to the category under which the suit falls and also on the question of valuation. *Krishna Mohan v. Raghunandan*, 4 Pat. p. 336.

(3) Before an appeal is admitted, a division bench of the High Court has no jurisdiction to re-open the valuation of an appeal made by the taxing officer. *Chandrabutti v. Gorry Lal*, 52 I. C. 508.

(4) The Taxing Officer has no power to direct an appellant to make any cash deposit as a condition precedent to the trial of any question of Court-fees. *Janak Parshad v. Askaran Parshad*, 6 Pat. 602 = 105 I. C. 742.

(5) But "the decision of the Taxing Officer is not final where he has proceeded *ex-parte* and without giving an opportunity to the suitor to show by adducing evidence or otherwise what the value of the subject-matter of the appeal is. It is essentially desirable that the Taxing Officer in determining questions of valuation should not as a rule base his decision merely upon allegations in the plaint as to the annual profits of the property to be valued. It may be that such valuation was over-estimated in the plaint as sometimes happens. \* \* \* In order to arrive at a proper decision, the parties should be called upon to procure in such manner as may be convenient such documentary or other evidence as they may be prepared to tender to enable him to decide the question." *Krishna Mohan v. Raghunandan*, 4 Pat. 336.

**Remedy against decision by Taxing Officer.**—The remedy of the party aggrieved by such a decision is to move the Board of Revenue to grant a refund.

**Refund.**—The High Court has got inherent powers to direct the Taxing Officer to issue the necessary certificate to the Revenue authorities to obtain refund of excess Court-fee paid through mistake or under order of Court. *Chandradari v. Tipen Prasad*, 40 C. 365 = 20 I. C. 498, but see 92 I. C. 626. See also 11 B. L. R. 370.

Where excess Court-fee was paid in the trial court, credit was given to it in the fee payable for the memorandum of appeal. (1886) A. W. N. p. 223.

Where owing to the erroneous order of the lower court the defendant was obliged to pay Court-fee in excess of what was really payable and though he ultimately succeeded in second appeal the High Court then did not include the excess court-fee paid by the defendant in his costs and the lower court when applied to, held it had no power in the matter it was held that the excess should be refunded. *Girish Chander Mali v. Girish Chander Dutta*, 36 C. W. N. 190.

**Taxing Judge.**—A taxing judge has no power to refer to a bench any case on Court-fees referred to him. 33 A. 20; 1924 Pat. 161. *Dhanukdari Prasad Pandey v. Ramadhikari Missir*, 12 Pat. 188.

the Governor of New South Wales, and thenceforth administered at least nominally by the Government of the Colony through a Chief Magistrate.<sup>1</sup> In 1913, however, the Commonwealth passed an Act under which the island was entrusted to the Commonwealth. It is administered by an Administrator and Chief Magistrate under the department of Home and Territories, with the aid of an Advisory Council of twelve members, six nominated, and six elected by the residents, who are the descendants of the Pitcairn Islanders, removed to the island in 1856 from their home, which was becoming too small for them. The Advisory Council had its powers extended by Ordinance 2 of 1925, so that in addition to looking after public roads, reserves, &c., and making by-laws, it can suggest new ordinances or the repeal or amendment of existing ordinances, which are enacted as usual by the Governor-General in Council. The island does not enjoy inclusion in the Commonwealth, or free trade; its products too would be more valuable to New Zealand, to which it is far nearer (400 miles as opposed to 930), and its population, descendants of British sailors—the mutineers of the *Bounty*—and Tahitian women, have lost energy by prolonged intermarriage. In 1925 a request for a Royal Commission to investigate matters was at first declined, but later conceded, by the Federal Government, which held that it was doing all that was possible for the benefit of the people. They on their part complained of the lack of a trained judicial officer and of poor communications, and urged the need of an improved steamer service to attract tourists, and of some outlet for their young men, who do not even engage in the whaling trade.<sup>2</sup>

### § 10. *The Alteration of the Constitution*

The Constitution of the Commonwealth provides for a great deal of rigidity in fundamentals with much possibility of change in detail. Thus the Parliament may fix electoral divisions for Senate elections in the States, though it has not done so; may increase or diminish the number of Senators, subject to the rule of equality of original States and a minimum of six members for such States; may increase or diminish the

<sup>1</sup> *Parl. Pap.*, C. 4193, 8358; Order in Council, 18 Oct. 1900.

<sup>2</sup> *Parl. Deb.*, 1925, pp. 1591–8, 2393–8. The Administrator was recalled in 1926, on an unfavourable report by the Commissioner ultimately appointed.

cause courts in Presidency Towns, court-fees on plaints and applications shall be collected in the manner provided in Chapter V of the Act. This section is not a charging section but merely prescribes the mode of collection. The fees leviable on the original side of a chartered High Court and in the Presidency Small Cause Courts are prescribed by enactments other than the Court-Fees Act. Section 4 is the charging section and declares that no document that is chargeable under Schedules I and II shall be received in the High Court in exercise of certain specified jurisdictions. Chapter III deals with fees in courts and public offices other than those referred to in Chapter II. Section 6 is the charging section, and declares that no plaint or memorandum of appeal shall be received unless the court-fee has been paid thereon.

**Criminal cases.**—For an exception to the general rule that an improperly stamped document should not be exhibited or acted upon unless the proper fee is paid, see s. 33.

**Exemption.**—For cases of exemption from court-fee, see ss. 18, 19, 33 and 35.

**Reduction or remission of court-fee.**—See s. 35 of the Act and the rules framed by the Governor-General in Council and the several Local Governments set out in the Appendix. Objections to findings after remand under O. 41, r. 26 C. P. C., need not be stamped nor applications to courts not required by the Code to be in writing, *Tetty v. Administrator-General of Bengal*, 2 N. W. P. 418, nor for certificate of sale, *Hira Ambaidas v. Tekchand*, 13 B. 670, nor for refund of stamp duty, *Bhikov Mulla v. Rask Monee*, 9 W. R. 357, nor appeals under the Agency Rules in Madras. *Reference under the Court-Fees Act*, S. 5, 22 M. 162.

**Courts herein before mentioned.**—They are the High Courts, and the Presidency Courts of Small Causes.

**"Filed", "Exhibited", "Recorded", "Received", "Furnished".**

**Filed.**—The word 'file' is derived from the Latin word 'Fīlum' and relates to the ancient practice of placing papers on a thread or wire for safe keeping and ready reference." A paper is said to be filed when it is delivered to the proper officer and by him received to be kept on file. The origin of the term indicates very clearly that the filing of a paper can only be effected by bringing it to the notice of the officer. Filing a paper in modern usage consists in placing it in the custody of the proper officer by the party charged with the duty and the making of the proper endorsement by the officer. In the absence of a statute requiring the filing of a paper or document, it is filed in and delivered to and received by the proper officer to be kept on file. The word carries with it the idea of permanently preserving all the things so delivered and received that it may become a part of the public record. *Bouvier's Law Dictionary*.

mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as Parliament prescribes. And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of any State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of a State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law, unless the majority of the electors voting in that State approve the proposed law.

The power of change is doubtless in some degree limited. Thus the purpose of the Act of 1900 was to create an indissoluble Federal Commonwealth under the Crown, and it may certainly be asserted that no constitutional change could eliminate the Crown, nor, as General Smuts has quite properly said, could the Crown through the Governor-General properly assent to a Bill which cut away the foundation of the Constitution. Probably, too, it is the better opinion that the federal character of the Constitution must be preserved, and that the proposal to unify the Commonwealth, creating a number—say thirty—of local government bodies on the model of the South African provinces, on the lines of the tentative Bill brought in in 1910, would require Imperial legislation to ratify it, if it succeeded in obtaining the majorities required, and were allowed to pass as valid by the High Court. Further, the power of alteration does not extend to the Constitution Act, with its provision in s. 5 for the operation of Commonwealth laws, and in s. 8 as to the application of the *Colonial Boundaries Act*, 1895, to the Commonwealth as a unit.

The mode of alteration is simple compared to that laid down in the Constitution of the United States. The rule in the case of deadlocks is specially noteworthy, because it permits of a reference to the people on very slight occasion. The justification for this provision is, of course, the paramountcy of the popular will, which renders it right that immediate reference be

criminal courts are exempted under certain conditions. Where is the necessity for this exemption, if there is no obligation on the court to collect the fees before "furnishing" which would be the result of the construction of Sec. 6 that the word "furnish" does not refer to courts?

A good deal of confusion is due to the loose way in which the word 'file' is used. For instance a plaint is first *presented* in a court. Under the Limitation Act it constitutes the *institution* of a suit. Section 4 of the Limitation Act requires that every suit shall be instituted within the period prescribed by that Act, and the explanation sets out that *for purposes of limitation* a suit is instituted in ordinary cases when the plaint is *presented* to the proper officer. There is thus a distinction recognised between the presentation of a plaint and its admission, after all requisite formalities including the payment of the necessary court-fees shall have been completed, *Moti Sahu v. Chattri Das*, 19 Cal. 780 at 782.

Plaints and petitions are *received* by the chief ministerial officer who *files* them if he is satisfied that they are properly stamped. *In re Lakshmi Ammal*, 1926 Mad. 96. But this process of "filing" is not a process that is gone through in the case of all documents received by a court. They are simply received and later on exhibited or recorded as the case may be. It is only in the case of a document on which the plaintiff sues (O. 7, R. 14, C. P. C.) that the party should *deliver* or *produce* the document to be *filed* with the plaint. In the majority of cases unless they are pleadings there is no separate process called the "filing" after the receipt of the documents by the court. Therefore it amounts to this. Receiving and furnishing referred to in the section do apply to courts and the words "public officer" could not be deemed to exclude the ministerial officers of courts. Of course it may be a hardship to collect court-fees on all documents received in court as soon as received, for they may not ultimately be used as evidence in cases where suits are disposed of without trial. But there is no other logical construction possible under the circumstances when sections 4, 6 and 28 are read together.

**Determination of court-fee.**—Where the allegation in the plaint is that the plaintiff is in joint possession, before the plaintiff could be called upon to pay any additional court-fee, the court ought to frame an issue on the question of joint possession alleged by him before the trial of the suit or proceed with the trial of the suit and demand the additional court-fee if and when it is found that his allegation of joint possession is not proved. *Ganga Prasad v. Bhawani Bhiku*, 1921 Oudh 174. It is desirable such questions are determined at the earliest possible moment, *Hitendra Singh v. Rameshwar*, 1921 Pat. 88 (F.B.) A Court of Justice cannot settle the question of court-fee by a compromise. Either a particular amount of court-fee is due or it is not, but there cannot be any question of compromise

whereas the general election for the House of Representatives would, it was expected, normally fall about April, that of Senators would, as matters stood, have to take place about December, and it was clear that Senators who had to face re-election could not attend to the business of the Senate when they had to electioneer on the enormous area of a State. The proposal was carried by a very large majority in all the States, but only 50·17 per cent. of the electors voted. At the general election of 13 April 1910<sup>1</sup> two referenda were submitted. One was simply to allow the Commonwealth to take over the debts of the States as they existed at the time when they were taken over, not, as provided in the Constitution, merely as they were at the time of federation; this was accepted by all the States except New South Wales, which apparently resented any attack on its financial autonomy, and became law by 715,053 to 586,271 votes. But the other proposal, to make perpetual the obligation on the Commonwealth to grant twenty-five shillings a head annually to the States, at the close of the period of ten years during which three-quarters of the net revenue from customs and excise had to be returned to the States, failed of acceptance, through the exertions of the Labour party in New South Wales, Victoria, and South Australia, in the latter case by a very small majority. The total votes were 645,514 for, 670,838 against. Of the voters 62·16 voted, and no less than 82,437 papers were informal, a feature seen also at the referendum of 1906. The objection to the arrangement as to State subsidies was that it would enable the lesser States to block change, if the provision were put in the Constitution. The argument was curious, as the Labour party favoured the proposal, and enacted it as a simple law, while it has often advocated the referendum as democratic.

The decision regarding the reserved powers of the States and the doctrine of immunity of instrumentalities led in 1910 to the passing of two Bills for reference to the people. The first Bill, the Constitution Alteration (Legislative Powers) Bill, was intended to give the Commonwealth power to legislate as to (a) trade and commerce generally, and not merely foreign and inter-State trade; (b) the control and regulation of all corporations (other than State corporations not formed for the purpose of gain), the dissolution of State corporations, and the creation

<sup>1</sup> Ibid., 1910, No. 1; Keith, *Journ. Soc. Comp. Leg.*, xii. 119 f.

26 C. W. N. 391. In a case decided by the High Court of Patna, the plaintiff was given a week's time to make up the deficiency in court-fees. Before the expiry of the week the court closed for the vacation. The amount of deficit was tendered two days after the reopening of the court and accepted, and the plaint was registered. The period of limitation for the claim had expired prior to the date of the acceptance of the deficit. It was held that the acceptance of the fee although tendered late, and the subsequent registration of the plaint amounted to the exercise by the court of its discretion to allow the deficiency to be paid on the day when it was tendered and that the plaint could be registered. *Raghunanda v. Ram Sunder*, 4 P. 190 = 1925 Pat. 299; *Gaya Loan Office v. Audh Behary*, 1 P. L. J. 420.

**Effect of S. 28.**—A court cannot, notwithstanding the provisions of s. 28 of the Court-Fees Act, reject a plaint on the ground of deficient court-fee, unless it has under O. 7, r. 11 C. P. C. required the plaintiff to put in the additional stamp within a fixed period and he has neglected to do so. 42 I. C. 675. Assuming that the court has a discretion under s. 28 of the Court-Fees Act to refuse to receive deficient stamp on a document filed before it, such a provision is, in respect of plaints, controlled by O. 7, r. 11 which requires that plaintiff should be given an opportunity to file the additional stamp. The period fixed by the court under O. 7, r. 11 C. P. C. need not necessarily be one which is within limitation for the suit. Under the said rule and s. 28 of the Court-Fees Act, the deficient fee can be made good by order of the court irrespective of the question whether on the date when the deficient fee was put in, limitation for the suit had expired or not. 22 M. 494; 32 M. 305 (F. B.); 25 I. C. 706 (Cal.); 70 I. C. 378; 51 I. C. 154. Section 149 C. P. C. is in accordance with the above view. 32 M. 305 (F. B.); 46 I. C. 509; 45 All. 518; 89 I. C. 419. *Jagannath v. Ramgopol* 147 I. C. 342 = (1934) A. L. J. 533 = 1934 All. 160.

**S. 148 C. P. C. and enlargement of time for deposit of deficient court-fee.**—When a plaint was insufficiently stamped and the court ordered the deficiency to be made good within a fixed time, but the plaintiff neglected to do so, and the court on his application enlarged the period for payment and it was only paid within such enlarged time it was held that the suit was not barred although limitation had run out when the deficient fee was paid. See the following decisions: 19 C. 780; 27 C. 814; 20 C. 41; 27 B. 330; 31 C. 75; 51 I. C. 154; 34 C. 20 (F. B.); 4. Pat. 190; "Section 149 enacted in order to set at rest a matter on which the case law was conflicting implies that the Court may in its discretion, at any stage, allow a party to pay the deficient court-fees. But this will not overrule O. 7, r. 11 in the sense that s. 149 gives the court discretion to refuse to grant the time which O. 7, r. 11 says it *shall* grant. This seems to make it clear that the court has discretion to extend to any limit, the time within which the deficient court-fee may be paid and that if the fee is paid within the time fixed, the plaint shall stand good as on the date of its

in different States. He pointed out that the power to deal with railways meant that the Commonwealth could enforce conditions which were unreasonable, leaving the State to bear the financial responsibility. The Liberal party in all the States threw its weight against the referenda, while the Labour party took the opposite side.

The Labour party, despite the defeat of the referenda, insisted that it was entitled to carry on the government with unimpaired authority, seeing that it had a majority of fourteen in the Senate and thirteen in the House of Representatives. Yet it was the case that the great issue at the general election of 1910 had been whether the Labour scheme of amendment of the constitution or Mr. Deakin's scheme of obtaining power from the States by delegation should be adopted, and the majorities against were crushing, in comparison with the majority in the House election of 672,000 for, 624,000 against Labour candidates. The Government, however, pointed out that the electorate required education in referenda; that there had been unprecedented unity of the Press in a campaign against the proposals; and that they would be resubmitted in 1913, when a general election would bring out the voters. Moreover, they decided to accept as valid one of Mr. Deakin's criticisms, that against the grouping of so many subjects in the Legislative Powers referendum, and on 31 May 1913<sup>1</sup> after duly passing the two Houses, there were submitted six referenda, each on a distinct project, namely trade and commerce, with, however, an exception for trade and commerce on State railways; corporations, but with a saving for State governmental and municipal corporations, whose inclusion in the wide terms of the earlier Bill had been justly censured; conditions of employment, relations of employers and employees, strikes and lock-outs, the maintenance of industrial peace and the prevention of industrial disputes; conciliation and arbitration for the prevention and settlement of disputes in relation to employment on State railways; the control of trusts, combinations and monopolies; and the nationalization of industries declared to be controlled by monopolies but with a very important saving for industries conducted by a State or a State corporation. The list shows that at

<sup>1</sup> Keith, *Imperial Unity and the Dominions*, pp. 104-6, 110-12; *War Government of the Dominions*, pp. 303 ff.



to make good the deficiency, that it may allow time where the court-fee payable is open to doubt or the amount of the fee cannot be ascertained by the court till the record is received, or it appears that the appellant has made an honest attempt to comply with the law, *but that it should not allow time, if the appellant has deliberately and to suit his own convenience paid on his appeal insufficient court-fee.* According to that court, s. 149 should not be construed in such a way as to nullify the express provisions of s. 4 or s. 6 of the Court-Fees Act. In such cases of deliberate payment of insufficient court-fee, the court is not bound to receive the appeal and give the appellant time to make good the deficiency. "Even if the court has such power it was held that it would be an unreasonable exercise of discretion to do so." See also *Deonath Sahai v. Radha Kant*, 1922 Pat. 56; *Amir v. Mohan*, 3 Pat. 337=80 I. C. 1030. The view taken by the High Court of Bombay has also been dissented from by the MADRAS High Court. *Narayan v. Venkatakrishna*, 27 M. L. J. 677=26 I. C. 33. The ALLAHABAD High Court has also held that it has full power to refuse to accept a memorandum of appeal when the amount of the court-fee paid is insufficient as otherwise s. 4 of the Court-Fees Act would be evaded indirectly. *Brijbhu Khan v. Tota Ram*, 1929 All. 75. The Calcutta High Court also has held recently that though s. 149, C. P. Code which was subsequently introduced in the Code of Civil Procedure, vests in the Court a discretion to allow appeals with insufficient court-fee to be received when proper Court-Fees are paid within the time allowed by court, the discretion should be exercised on correct judicial principles, and not in a way so as to nullify the express provision of ss. 4 and 6 of the Court-Fees Act. *Khatumannessa Bibi v. Durjodhene Roy Chowdhury*, 61 Cal. 663=38 C. W. N. 650=1934 Cal. 659. To the same effect is the decision of Burn, J., of the Madras High Court in S. A. No. 696 of 1934 (unreported). See also the decision of the Lahore High Court in *Ram Labhaya v. Vaid Parkash*, 1934 Lah. 424 cited under s. 4.

**Bengal Amendment.**—By the Bengal Act VII of 1935, a new sub-section has been added to section 6. This lays down that notwithstanding anything contained in section 5 of the Act, the Court may receive an insufficiently stamped plaint or memorandum of appeal. According to section 6 of the Act no document which has been insufficiently stamped shall be received. The Bengal amendment sets at rest the conflict of views whether an insufficiently stamped memorandum of appeal could be received and whether the appellant should be granted time to make good the deficiency of stamp as a plaintiff is given under the provisions of O. VII 11 C. P. C. Even the Bengal amendment simply says that a Court *may* receive and register the appeal after the deficient Court fee is paid within a time to be fixed by the Court. The question whether in cases where the appellant pays deficient Court fee deliberately, he is still entitled to the grant of time to make good the deficiency appears to be left

bined again the substance of the five Bills submitted in 1913, omitting, however, the measure as to conciliation and arbitration in respect of employment on State railways; the second Bill repeated the proposals as to nationalization of monopolies, but interposed investigation, and a report by a Justice that a monopoly existed before a final decision by Parliament. Concessions of great importance were made, in the fact that the new powers were to endure only for three years, and to lapse if by 31 December 1920 the Government had not summoned a Conference to deal with the recasting of the Constitution. The Government also accepted from the Senate amendments omitting the power to create, regulate, control, and dissolve corporations, since, owing to its brief duration, it was not worth taking this power as to Commonwealth corporations, and it excluded educational corporations created by the States from control, in order to obviate the accusation of invading State rights. In favour of the new powers was adduced the fact that the Court of Conciliation and Arbitration was unable effectively to regulate conditions of industry, that it had not the power to declare a common rule, and had no jurisdiction whatever, unless a dispute extended beyond the limits of a State. It was not desired to supersede, but to harmonize and render effective the State tribunals. Monopolies must be dealt with, and, now the war was over, it was doubtful if the Commonwealth could continue such useful activities as the butter pool or the manufacture of wool in the Commonwealth mills. But the electors on 19 December 1919 rejected the two Bills. The first, for the increase of legislative powers, received only 911,357 votes for, 924,160 against; the Nationalization Bill had 813,880 for, 859,451 against. The percentages of voters were 64·41 and 58·72, although ballot papers were issued to 71·33 per cent. of the voters. The proposals were accepted by Victoria, Queensland, and Western Australia; rejected by the others. It is noteworthy that it was found impossible to obtain any substantial number of voters on the referenda on these abstract issues; the fact compares very curiously with the percentages of 82·75 and 81·34, which were obtained in the votes on the two military service referenda, submitted to the people in 1916 and 1917 on the subject of applying compulsory service for recruiting the overseas forces of the Commonwealth.

and the Legislature has by this section set at rest the doubts created by the conflicting decisions prevailing in Allahabad and in other High Courts.

**Where payment is made after expiry of time granted.—**

- (1) If the period is not enlarged the payment is no good, 34 C. 20 (F. B.)
- (2) But if the court-fee is accepted by court then the period must be deemed to have been extended, 1 P. L. J. 420.
- (3) If the payment is made within the period of limitation the suit is not time-barred merely because the payment is made *after* the period fixed by the court. 2 C. L. J. 70.

**Presumption when court-fee is paid and accepted by Court.**—A Court may be taken to have extended the time and to have treated the time when the court-fees were actually paid as the time fixed for payment when it accepts them on that date. *Maria Thangammal v. Iravatheswara*, (1915) M. W. N. 228 = 28 I. C. 504.

Further where a court accepts an insufficiently stamped document the proceedings that follow thereon are void. *Musst. Jintan v. Ahmad*, 1928 Lah. 221.

But in the following case where a division bench allowed the deficiency to be made good subject to any objection that may be taken at the hearing it was held that the order of the division bench was not a definite order condoning the delay in paying the deficit. *Jodhan v. Nankhu*, 3 Pat. L. J. 484. See also *Umed Ali v. Municipal Committee, Jhang*, 2 Lah. 1. But in *Jowala Singh v. Mt. Dhano*, 133 I. C. 122, the decision in 2 Lah. 1 was considered again by the Lahore High Court and it was held that once the court has allowed and accepted payment of deficit court-fee on a memorandum of appeal no further question of limitation arises. "It is not proper for the Court to permit the deficiency to be made up and then to hold that the appeal was barred by limitation."

**Application for letters of administration.**—Duty must be paid even where letters of administration are not absolutely necessary and they are only applied for either by way of precaution or for the sake of convenience. In the goods of *Madho Prasad*, 1935 A. L. J. 391 = 1935 All. 449.

**Levy of Stamp Duty.**—Section 28 of the Court-Fees Act does not override the provisions of the C. P. Code regarding a plaint or a memorandum of appeal and the court cannot reject an insufficiently or improperly stamped plaint or appeal without giving time to the party to supply the deficiency. *Thusal Singh v. Paran Singh*, 156 P. R. 1888. So where a plaint (*Valambal v. Vythilinga*, 24 M. 331), or a memorandum of appeal (*Chennappa v. Raghunatha*, 15 M. 29) is filed

abolish the doctrine of the reserved powers of the States<sup>1</sup> is a further source of encroachment on their rights.

A curious development of the new Constitution has been the holding of Conferences of Premiers of the States, with or without representatives of the Commonwealth, to discuss business of common interest. This, though at first sight unnecessary, is fully justified, because the Commonwealth has no connexion with the main business of the States, which, therefore, have every reason to seek to co-operate, while in many other fields, especially immigration, co-operation is essential if any results are to be achieved, seeing that land settlement is outside the province of the Commonwealth, while immigration is essentially within her control. Further, the great work of securing the use of the Murray for irrigation has been assisted by co-operation of this kind, though the other problem of the unification of railway gauges in which the Commonwealth has a military interest is still far from settlement, despite its important contribution by using the standard gauge of 4 feet 8½ inches for the transcontinental line from Port Augusta to Kalgoorlie.

A new factor adding urgency to the claim for the revision of the Constitution emerged in 1926, when the High Court on 19 April, in the process of revising the older decisions, declared that, if a Federal award as to workers provided for a longer week than 44 hours, then the Federal award was valid and superseded the State rule.<sup>2</sup> This decision immediately produced a prolonged strife in New South Wales, where, as in Queensland, legislation has pronounced in favour of the 44-hour week, and defiance of the law was proclaimed. Ultimately, however, the workers yielded to the steadfast resistance of the employers, and work was resumed on the terms of the Federal ruling. But not unnaturally the Commonwealth Government decided that there was urgent need for strengthening the Commonwealth Court by its reconstruction to enlarge its personnel and to give it wider authority, on the basis that it ought to have sufficient power to secure settlements of difficulties beyond the capacity of any State to handle, by producing a régime of reasonable uniformity. The case for change put by Mr. Bruce in his August campaign emphasized the fact that Federal jurisdiction

<sup>1</sup> *Engineers' Case* (1920), 28 C. L. R. 129; *Minister for Trading Concerns v. Amalgamated Society of Engineers*, [1923] A. C. 170.      <sup>2</sup> 37 C. L. R. 466.

**Revision.**—An order refusing to give time to a party to make up the deficiency in court-fee does not amount to a decision of a “case” within the meaning of s. 115 C. P. C. to enable the High Court to revise that Order. *Chhakkanlal v. Kanhiya Lal*, 45 A. 218=69 I. C. 921.

**Suit in *Forma Pauperis*.**—For the definition of a pauper see O. 33, r. 1, C. P. C. Explanation. A plaintiff suing in a civil court must pay the court-fee prescribed by the Court-Fees Act. But where a person is too poor to pay the same, provision is made in O. 33 C. P. C. to enable him to bring and prosecute suits without payment of court-fees. *Jotindra v. Dwaraka*, 20 Cal. 111. But there are certain fees from which even a pauper is not exempted *viz.*, fees for service of process, and such fees must be paid by him. See O. 33, r. 8. If the pauper succeeds in the suit the Government has a first charge on the subject-matter of the suit for the amount of the court-fee which should have been paid by him. O. 33, r. 10. If the pauper fails in the suit, the court should order him to pay the court-fees due by him. O. 33, r. 11.

**Where an application to sue as pauper is granted.**—The suit will be deemed to have been filed on the date of the filing of the application and not on the date of its being registered as a suit (s. 4 of the Limitation Act, 1908). Consequently where the rate of court-fee was enhanced between the date of filing and the date of granting the application, the court-fees were assessed at the former rate. *Kaman v. Malli*, 49 M. L. J. 538=91 I. C. 302.

**Where application is refused.**—The suit is taken to have been filed on the date of presentation of a properly stamped plaint.

**Where the party voluntarily converts his application into a properly stamped plaint.**—A person who has applied for leave to sue as a pauper may at any time before an order is made under O. 33 r. 7 C. P. C. convert his application into a plaint, by paying into court the necessary court-fees. In such a case if the application was made *bona fide*, the suit would be deemed to have been instituted on the day on which the application was filed and not on the day on which the court-fees were paid. But if it is found that the application was made in bad faith, the suit would be deemed to have been instituted on the day on which the court-fees were paid and not on the day on which the application was filed. *Stuart Shinner v. Ordz*, 2 A. 241. *Naraini v. Mullhan Lal*, 17 A. 526; *Janakday v. Jank*, 28 C. 427; *Sookal v. Dal Chand*, 1 R. 196=74 I. C. 835. But see *Abbasi v. Nanhi*, 18 A. 206. See also Mr. Mulla's Commentaries on the Code of Civil Procedure, O. 33, r. 7.

**Application for probate by a pauper.**—If a plaintiff is allowed to sue as a pauper, the only court-fee he is bound to pay is, what is payable for service of process, he being relieved from paying all other court-fee (O. 33, r. 8, C. P. C.) All fees chargeable under the

wealth during the recent strikes in Australia, when by reason of its restricted powers it could do nothing to save the people from grave interference with the command of the necessities of life, and the five Labour Governments in the States sided with the strikers and neglected the obvious duty of securing the interests of the country as opposed to sectional advantage. Labour was divided ; the assent of the Federal party was resented in the States, and threats were made of expelling the leader of the Federal Opposition from the Australian Labour party if he did not obey the decision to refuse support to the referenda. The head of the State Labour party in New South Wales attacked the measure regarding industrial matters on the ground that it would enable the Federal Government to create a tribunal with life tenure and representing the views of the employers ; the leader of the Opposition in the State objected to it as an encroachment on State authority, and as carrying out a former project of the Labour party, and the Labour Premier of South Australia adopted a similarly hostile view. Tasmania and Western Australia were in no mood to accept any increase of Federal authority, and in Victoria the non-Labour Government disagreed entirely with Mr. Bruce as to the wisdom of his proposals and opposed them vehemently. In the result Victoria, South Australia, Western Australia, and Tasmania rejected both proposals with little hesitation, and only in New South Wales and Queensland was a measure of success achieved for the proposals.<sup>1</sup> Mr. Bruce at once intimated his acquiescence in the result as indicating the voice of the people. He had evidently launched his campaign unwisely, and, as he had predicted a constitutional session to be held in 1927 at Canberra to consider recasting the Constitution, it is not easy to understand how he came to think it wise to submit piecemeal proposals which evidently should have formed part of a wider scheme, if indeed they were worth pressing. Moreover, the rule of compulsory voting enacted in 1924 proved a severe handicap to success. Voters who were confused by the complexity of the issues, and were compelled under pain of fine to vote, may be excused if they thought it best not to support changes which could in no sense be said to be essential, and whose import

<sup>1</sup> Final figures for the first Bill, industry and commerce, for, 1,247,088 against, 1,619,655 ; for essential services, 1,195,502 ; against, 1,597,793.

has been refused, even though the appellant may actually, but at a later period, stamp the memorandum of appeal presented with the petition. *Bishnath v. Jagirnath*, 13 A. 305. But when at the time the petition for leave to appeal in *forma pauperis* is dismissed, the petitioner has leave to proceed in the usual way and subsequently time is given to pay the stamp the memorandum of appeal must be taken to have been filed, when the petition was originally presented. *Bai Ful v. Banor Bhai*, 22 B. 849; *Durgachara v. Dookiram*, 26 C. 925; *Diya! Das v. Sunder Das*, 65 I. C. 741. An appellate court has power under s. 149 C. P. C. when dismissing an application for leave to appeal as a pauper, to grant time to the applicant to pay the requisite court-fee on the memorandum of appeal and the same if paid within the time limited by court, will exempt the appeal from the operation of the rule of limitation. *Nellavudian v. Subramania Pillai*, 38 I. C. 617—31 M. L. J. 290; *Diya! Das v. Sunder Das*, 62 I. C. 741. The time can be enlarged even under s. 5 of the Limitation Act. *Durga Charan v. Dookiram*, 26 C. 925.

**Withdrawal of suit.**—Where the plaintiff withdraws the suit with or without liberty to institute a fresh suit on the same cause of action, he is nevertheless liable to pay the court-fee. *Secretary of State v. Bhagirathi Bai*, 31 B. 10; *Secretary of State v. Narayan*, 20 B. 102.

**Dismissal of suit.**—The pauper plaintiff is bound to pay the court-fee even if the suit is dismissed without trial. *Collector of Vizagapatam v. Abdul Karim*, 12 M. 113; *Collector of Trichinopoly v. Sivarama Krishnan*, 23 M. 73. But see *Collector of Kanara v. Krishnappa*, 15 B. 77.

**Government bound to pay court-fees.**—Where Government files a suit it is as much bound to pay court-fees as an ordinary litigant. "There is no exemption in favour of Government under the Court-Fees Act as under the Stamp Act." *Bell v. Municipal Commissioners of the City of Madras*, 25 M. 493. Nor are Indian chiefs exempt. B. G. Resolution No. 2470, dated the 17th April 1888.

**Objection to inadequacy of court-fees when to be taken.**—Such objection when not taken in the trial courts cannot be raised for the first time in appeal. *Wilayat v. Umardeaz Ali Khan*, 19 A. 165. "The Court-Fees Act is not intended to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State and a judgment not shown to have been wrongly decided to the detriment of revenue cannot be set aside at the instance of a party except on the ground of jurisdiction." *Rachappa v. Siddappa*, 43 Bom. 507—36 M. L. J. 437 (P. C.) See also the observations in *Mohomed Elliyas v. Rahima Bee*, 29 L. W. 42. See also 1929 Lah. 509 (2).

£20,000,000 for some fifty years, and being faced with £9,000,000 for old age pensions, £700,000 for maternity allowances, and the necessity of large railway expenditure for unification of gauge and strategic and developmental railways. The States, however, would receive certain grants, in all £600,000 in the first year of the new scheme, with £450,000 and £378,000 a year for Western Australia and Tasmania, in view of their unfortunate position under federation. The proposals were wholly unacceptable to the States when discussed in conference, it being asserted that they had a definite right to share in the proceeds of customs and excise, and that federation would never have been agreed to if the States had been left to depend on land and income tax as against indirect taxation.<sup>1</sup>

Co-operation between Commonwealth and States is difficult in other spheres also. The arrangement under which since 1920 the Commonwealth has undertaken the responsibility for recruiting immigrants and transporting them to Australia, while actual settlement rests with the States, has not resulted in effective immigration, nor avoided bitter complaints as in Victoria of the criminal tendencies of an undue number of the immigrants. The immigration agreement of 8 April 1925 between the Imperial and the Commonwealth Governments rests on the provision of £34,000,000, to be lent in ten years to the States at a low rate of interest for developmental work, on condition that for each £75 advanced one immigrant shall be effectively settled. The Commonwealth has supplemented this by the *Development and Migration Act*, 1926, which sets up a Board of four members charged with the duty of reporting on matters concerning the development of the Commonwealth, whether by agreement with the States or otherwise, including the establishment of new industries, and on all proposed settlement schemes suggested by the States ; no such scheme will be approved unless recommended by the Commission. The States, however, though nominally accepting the scheme, with the exception of New South Wales, have shown clearly that their one concern is the securing of cheap money for development, and that immigration is a very secondary consideration, while the Commonwealth Labour party was frankly hostile to the whole scheme, though professing lip service to the need for a larger population to hold Australia.

<sup>1</sup> See resolutions of Victorian Council and Assembly of 7 and 21 July 1926.



for an injunction. (d) to obtain an injunction, [or other consequential relief—BOMBAY.]

for easements : (e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts ; (f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal [with a minimum fee of rupees five in the case of suits falling under clause (c)—BOM. & C. P.] [subject to the provisions of section 8-C.—BEN.]

[Provided that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (V) of this section—MADRAS.]

In all such suits the plaintiff shall state the amount at which he values the relief sought.<sup>1</sup>

[IV-A. In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property—MADRAS.]

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1. The words "and the provisions of the Code of Civil Procedure," section thirty-one, shall apply as if for the word 'claim' the words 'relief sought' were substituted" were repealed by the Repealing and Amending Act, 1891 12 of 1891).

part played by the Imperial Government had, put at the highest, been no more than inducing Nova Scotia and New Brunswick to enter federation, whereas the essence of the federation was the determination of the statesmen of the United Province of Canada to secure the separation of the two uncomfortable yokefellows. Sir Bartle Frere was thus commissioned to proceed to the Cape as Governor to carry out Lord Carnarvon's policy of federation, while Mr. Froude was sent to pave the way by sounding those concerned. The dispatch of 4 May 1875<sup>1</sup> based on these investigations was a hopeless document; it insisted on the necessity of free action by all parties, but it made definite suggestions which were needlessly impracticable. The Cape, it was suggested, should be represented at the Conference by Mr. Molteno for the western province, Mr. Paterson for the eastern, a view which at once reopened a controversy which had seemed to be disposed of in 1872, when the Imperial Government, on the grant of responsible government to the Cape, declined to intervene in any way to secure a separate status for the east of the Colony. The Cape Parliament hotly repudiated the idea that there should be representation in the manner suggested, and, despite Lord Carnarvon's efforts on 15 July<sup>2</sup> to smooth away the opposition, the Cape declined to take any steps to discuss federation, Mr. Froude, sent to represent the Imperial Government, finding Mr. Molteno adamant. President Brand<sup>3</sup> of the Free State was expressly forbidden by his Legislature to discuss federation, though he took up other matters with the Imperial Government on a visit to London in 1876, and an effort to melt Mr. Molteno's heart and induce him at least to consult<sup>4</sup> with Natal delegates failed of fruition, that Premier having become a rabid opponent of federation. The annexation of the Transvaal in 1877 proved very far from helping on the cause, though Mr. Froude anticipated Lord Selborne<sup>5</sup> in pointing out to the Free State and the Transvaal that federation would enable the South African Colonies to escape the weight of Imperial intervention,

<sup>1</sup> *Parl. Pap.*, C. 1244 (1875); C. 1399 (1876); H. L. 40; C. 1632 (1877); C. 1980 (1878); Molteno, *Sir John Molteno*, i. 329 ff.; ii. 1; Walker, *Lord de Villiers*, pp. 130 ff.

<sup>2</sup> *Parl. Pap.*, C. 1399, pp. 5 ff.

<sup>3</sup> *Ibid.*, C. 1631, p. 47; C. 1980, pp. 17 ff.

<sup>4</sup> *Ibid.*, C. 1631, pp. 61-79.

<sup>5</sup> *Ibid.*, Cd. 3564, p. 18.

- (d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed as above mentioned—the market value of the land:

*[Provided that if rules are framed under s 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph—MADRAS.]*

Provided that, in the territories subject to the Governor of Bombay in Council the value of the land shall be deemed to be—

Proviso as to Bombay Presidency;

- (1) where the land is held on settlement for a period not exceeding thirty years and pays the full assessment to Government—a sum equal to five [*seven and half—BOMBAY*] times the survey-assessment;
- (2) where the land is held on a permanent settlement, or on a settlement for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten [*fifteen—BOMBAY*] times the survey-assessment; and
- (3) where the whole or any part of the annual survey-assessment is remitted—a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten [*fifteen—BOMBAY*] times the assessment, or the portion of assessment, so remitted:

*Explanation.*—The word “estate,” as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or raiyat shall have executed a separate engagement to Government or which, in the absence of

authorizing the Crown to annex territories to the Cape of Good Hope.

The disunion of South Africa, which might have lasted much longer, became less tolerable when first the discovery of diamonds opened up a revolutionary era in railway construction, and then the gold rush to the Rand brought about the industrial development of the Transvaal, which by 1892 was in direct railway communication with Capetown, Port Elizabeth, and East London, and shortly after with Durban, and, most important of all, Delagoa Bay, awarded in 1875 by Marshal Macmahon's arbitration to Portugal. The obvious unfairness of the Cape and Natal retaining all the receipts on customs for imports was admitted in theory in 1882; but the first effective remedy arose in the agreement of 1889 for a Customs Union between the Cape and the Orange Free State, joined in 1891 by Basutoland, and in 1893 by Bechuanaland. Natal at last agreed to come in in 1898,<sup>1</sup> when the amount to be retained by the coast colonies was reduced to 15 per cent. The railway question had been settled by a compromise in 1895, after the dispute between the Cape and the South African Republics, over the question of the Cape share in the trade going to the Republic, had been settled only by the weight of Imperial intervention in support of the Cape, after the Boer Government had closed the drifts and Mr. Rhodes, with the assent of his Dutch Ministers and of Mr. Schreiner, had offered to pay half the cost of a war to force the Republic to open them.<sup>2</sup> The war fortunately in the long run did nothing to hinder union. It resulted in the removal of the preliminary difficulty of the independence of the two Republics which had all along been unwilling to consider any acceptance of allegiance to the Crown. Then it resulted, in the case of the two Colonies annexed, in the placing of their railways and police under the administrative superiority of the Intercolonial Council constituted under various Orders in Council of 1902-5,<sup>3</sup> while in 1903 a Customs Union of the four Colonies,<sup>4</sup> Southern Rhodesia, and the territories

<sup>1</sup> On the defeat of Rhodes' and Milner's federal aspirations then, see Walker, *Lord de Villiers*, pp. 321 ff. Southern Rhodesia's customs were dealt with in the new Order in Council of 1898, which prevented their increase beyond the existing Cape tariff for British imports.

<sup>2</sup> B. Williams, *Cecil Rhodes*, pp. 258 ff.

<sup>3</sup> 15 Sept. 1902; 20 May 1903; 21 Apr. 1904; 12 Jan. 1905; 10 May 1905.

<sup>4</sup> Walker, *Lord de Villiers*, pp. 410 ff.

[VI. *In suits to enforce a right of pre-emption—according to the market value of the land, building or garden in respect of which the right is claimed :*

Explanation.—*In this paragraph ' building ' has the same meaning as in paragraph V :—BENGAL.]*

[VI-A. *In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—if the plaintiff has been excluded from possession of the property of which he claims to be co-parcener or co-owner, according to the market value of the share in respect of which the suit is instituted :—BENGAL.]*

VII. In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint ;

for interest of assignee of land-revenue ;

VII. In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached :

to set aside an attachment ;

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest ;

IX. In suits against a mortgagee for the recovery of the property mortgaged, and in suits by a mortgagee to foreclose the mortgage,

to redeem ;

to foreclose ;

or, where the mortgage is made by conditional sale, to have the sale declared absolute—

according to the principal money expressed to be secured by the instrument of mortgage ;

[IX. (a) *In suits against a mortgagee for the recovery of the property mortgaged,—according to the principal money expressed to be secured by the instrument of mortgage ; and*

authorizing the Crown to annex territories to the Cape of Good Hope.

The disunion of South Africa, which might have lasted much longer, became less tolerable when first the discovery of diamonds opened up a revolutionary era in railway construction, and then the gold rush to the Rand brought about the industrial development of the Transvaal, which by 1892 was in direct railway communication with Capetown, Port Elizabeth, and East London, and shortly after with Durban, and, most important of all, Delagoa Bay, awarded in 1875 by Marshal Macmahon's arbitration to Portugal. The obvious unfairness of the Cape and Natal retaining all the receipts on customs for imports was admitted in theory in 1882; but the first effective remedy arose in the agreement of 1889 for a Customs Union between the Cape and the Orange Free State, joined in 1891 by Basutoland, and in 1893 by Bechuanaland. Natal at last agreed to come in in 1898,<sup>1</sup> when the amount to be retained by the coast colonies was reduced to 15 per cent. The railway question had been settled by a compromise in 1895, after the dispute between the Cape and the South African Republics, over the question of the Cape share in the trade going to the Republic, had been settled only by the weight of Imperial intervention in support of the Cape, after the Boer Government had closed the drifts and Mr. Rhodes, with the assent of his Dutch Ministers and of Mr. Schreiner, had offered to pay half the cost of a war to force the Republic to open them.<sup>2</sup> The war fortunately in the long run did nothing to hinder union. It resulted in the removal of the preliminary difficulty of the independence of the two Republics which had all along been unwilling to consider any acceptance of allegiance to the Crown. Then it resulted, in the case of the two Colonies annexed, in the placing of their railways and police under the administrative superiority of the Intercolonial Council constituted under various Orders in Council of 1902-5,<sup>3</sup> while in 1903 a Customs Union of the four Colonies,<sup>4</sup> Southern Rhodesia, and the territories

<sup>1</sup> On the defeat of Rhodes' and Milner's federal aspirations then, see Walker, *Lord de Villiers*, pp. 321 ff. Southern Rhodesia's customs were dealt with in the new Order in Council of 1898, which prevented their increase beyond the existing Cape tariff for British imports.

<sup>2</sup> B. Williams, *Cecil Rhodes*, pp. 258 ff.

<sup>3</sup> 15 Sept. 1902; 20 May 1903; 21 Apr. 1904; 12 Jan. 1905; 10 May 1905.

<sup>4</sup> Walker, *Lord de Villiers*, pp. 410 ff.

according to the amount of the rent of the [immoveable property] to which the suit refers, payable for the year next before the date of presenting the plaint.

#### COMMENTARY.

**Amendments.**—Para (iv) The words “and the provision of the Code of Civil Procedure s. 13, shall apply as if for the word ‘claim’ the words ‘relief sought’ were substituted” were repealed by the Repealing and Amending Act of 1891 (XII of 1891).

Para (xi) The clause (cc) was inserted by the Court-Fees Amendment Act, 1905 (VI of 1905). In clause (e) for the word ‘land’ the words ‘immoveable property’ were substituted by the Court-Fees Amendment Act VI of 1905.

**Local Amendments.**—Several portions of the section have been amended by the Amending Acts of the various Provincial Legislatures of Bengal, Bihar and Orissa, Bombay, Central Provinces and Madras. They are set out in extenso in the Appendix. The amendments are incorporated in the section itself and the portions printed in italics. As regards certain excepted suits in Madars see *infra*.

**Section fairly exhaustive.**—This section is easily the most important section in the whole Act. It is headed as “Computation of fees payable in *certain* suits.” Though it is a regular bunch of sub-sections, clauses and provisos which cover almost the whole range of possible actions and attempts to be both comprehensive and exhaustive, the want of precise expression in several places has led to the overlapping of certain provisions giving rise to difficulties in interpretation, and consequent conflict of decisions. These are all set out in detail in commenting on the several paragraphs. Still this is the most important section which will have to be referred to in the valuation of suits. This is supplemented mainly by Article 1 of schedule I which provides for cases ‘not otherwise provided for in the Act’. This section lays down the category of the suit for the purposes of valuation, and which class a suit belongs to and then Article 1 Schedule I would show the actual fee to be collected as *ad valorem* fees. If a fixed fee is leviable, then Schedule II of this Act provides for same.

#### Valuation.

**(1) For court-fee and jurisdiction.**—Valuation of the subject-matter of litigation is of two kinds. It is either for the purpose of determining the forum, in which case it is valuation for the purposes of jurisdiction (*Ankil Chunder v. Mohini Mohan*, 5 C. 489) or it is for the determination of the court-fee payable. The principles of valuation for the purposes of jurisdiction are regulated by the Suits Valuation Act and those for determining the court-fees are regulated by the provisions of the Court-Fees Act.

forces in 1907, and common interests in matters of agriculture and pastoral care—destruction of locusts, control of East African fever and scab in sheep—emphasized the artificial character of South African boundaries. The position was comprehensively summarized by Lord Selborne at the close of 1906, in a rather commonplace memorandum<sup>1</sup> decorated by some cheap rhetoric, and with an artificial emphasis on the benefits of Union in eliminating British control from South Africa, and on the benefits of securing for South Africa control—which was never to be realized—over the development of Rhodesia. More practically, the matter was taken up from one aspect at the Colonial Conference of 1907<sup>2</sup> in London, when the advantages of having a single Court of Appeal from all the South African Colonies were conceded. Moreover, the weakness of the South African representatives with their small areas behind them was somewhat keenly felt in comparison with the impressive representation of Canada by Sir W. Laurier and Australia by Mr. Deakin.

The actual cause of the advent of union was, as might be expected, the pressure of financial considerations in the wide sense of that term, accentuated by native rebellion in Natal, due to serious misrule. When the question of customs revision came up at the conference of May 1908, together with the problem of railway rates, there seemed to be no way out, on the basis of the existing constitutional relationships. The delegates, therefore, agreed to recommend their Legislatures to send delegates to a National Convention to draft a constitution. As a result, there met on 12 October 1908 at Durban a Convention of 33 representatives, 12 from the Cape, 8 from the Transvaal, 5 each from Natal and the Orange River Colony, and 3, with a watching brief only, from Southern Rhodesia. The Convention<sup>3</sup> changed its place of sitting to Capetown and in February completed its draft constitution. The draft, most unexpectedly from the popular point of view, turned out not to be one of federation at all. This had been the natural expectation of South Africa, where differences between the provinces seemed real enough to

<sup>1</sup> *Parl. Pap.*, Cd. 3564. 'One-sided,' Smuts, in Walker, *Lord de Villiers*, p. 422.

<sup>2</sup> *Parl. Pap.*, Cd. 3523, pp. 207 ff.

<sup>3</sup> In addition to the official record see Brand, *Union of South Africa* (1909); Walton, *Inner History of the National Convention* (1912); Walker, *Lord de Villiers* (1925); Colvin, *Jameson* (1922).



fees and the value for purposes of jurisdiction shall be the same.' See also the proviso for Madras in s. 7 (iv) (c).

### Rules for the determination of valuation.

(i) If the valuation is for the purposes of jurisdiction, the valuation as per the provisions of the Court-Fees Act is not proper except in those cases where by s. 8 of the Suits Valuation Act, the valuation both for court-fees and jurisdiction is to be the same. *Jeebraj v. Indrajit*, 18 W. R. 109; *Anrita v. Naru*, 13 B. 489; *Bai Meher v. Magan Chand*, 29 B. 96.

(ii) In cases where the valuation is to be the same both for court-fees and for purposes of jurisdiction, the procedure to be adopted is first to value the suit for payment of court-fees in accordance with s. 7 and then adopt the valuation so determined as the value for jurisdiction. *Sailendra v. Ramchandran*, 25 C. W. N. 768; *Hari Sankar v. Kali Kumar*, 32 C. 734; *Velu Gounder v. Kumaravelu*, 20 Mad. 289; *Annappurnayya v. Nagarathnamma*, 1926 Mad. 591.

(iii) In the cases specified in s. 8 of the Suits Valuation Act, different valuations for the purposes of court-fees and for jurisdiction should not be given. *Balakrishna v. Janaki Bai*, 44 B. 331; *Jogeshwara v. Durgaprasad*, 36 A. 500; *Kandhaiya v. Jagram*, 46 A. 419; *Ayimuddin v. Kadir Rowthen*, 43 I. C. 995.

(iv) The plaint alone should be looked to for the determination of the value of the claim. *Rajabala Dasi v. Radhica Charam*, 1924 Cal. 969; *Bagula Sundari v. Prasanna*, 35 I. C. 797; *Mahendra Chandra v. Ashuthosh*, 20 C. 762; *Zinnatunessa v. Girindra*, 30 C. 788; *Banku v. Chatur*, 1925 Pat. 640; *Chingathan Vitol Sankaran v. C. Vital Gopal*, 30 Mad. 18; *Karuppa Thevan v. Angammal*, 1926 Mad. 678 = 51 M. L. J. 67; *Arunachala Chetty v. Rangaswami Pillai*, 38 M. 922; *Bindrabhan v. The Punjab National Bank*, 30 P. L. R. 176; *Iswara Prasad, v. Hari Prasad Lal*, 6 Pat. 506 = 1927 Pat. 145; *Tulsi Bibi v. Furokh Bibi*, 60 C. L. J. 337; *Secretary of State v. Lakhanna*, 64 M. L. J. 24 = 141 I. C. 80 = 1933 Mad. 430; *Manikkam Pillai v. Murugesam Pillai*, 64 M. L. J. 576 = 1933 Mad. 431. It is not the function of the court to ask itself whether the allegations in the plaint are true or probable. *Secretary of State v. Lakhanna*, 64 M. L. J. 24 = 141 I. C. 80 = 1933 Mad. 430. A plaintiff is clearly entitled to have the case made by him in the plaint tried by the courts. The question of court-fee must be decided on the plaint and the decision is not affected by the question whether the suit is maintainable. *Radhakrishna v. Ram Narain*, 1931 All. 369; *Ishwar Dayal v. Amba Prasad*, 1935 A. L. J. 498 = 1935 All. 667.

(v) In determining the provisions of the Act applicable to a particular suit, the allegations made by the plaintiff alone must be considered and the pleas raised by the defendant do not affect the question. *Asa Ram v. Jagan Nath*, 15 Lah. 531 = 1934 Lah. 563 (F.B.); *Hassan Khan v. Ahmad Khan*, 1935 Pesh. 30. The averments in the written statement of the defendant cannot be taken into consider-

electoral districts, but proportional representation was sacrificed, being retained only for the election of Senators and members of the provincial committees. The final draft of 11 May 1909 was duly submitted to the Parliaments, and accepted by the Cape, Transvaal, and Orange River Colony ; in Natal, the taking of a referendum had from the first been asserted to be necessary by the Natal Government, and it was duly held ; the voting of 11,121 to 3,701<sup>1</sup> was unexpectedly decisive, and it was, therefore, easy for the Bill to be definitely accepted. Delegates accordingly proceeded to England to secure the passing of the draft as an Imperial Act, it was debated in the Lords on 27 July and 3 August, in the Commons on 16 and 19 August, but no changes were insisted upon, though the enactment of a colour bar for membership of the Parliament was felt to be a retrograde step, and the Government gave a formal promise, which was duly honoured, that the Governor-General would be given formal instructions that, in addition to the safeguard for the native franchise in the Cape preserved in the Act, the position was to be strengthened by his reserving any Bill which might be passed to withdraw the franchise. It was added that Imperial assent to such a measure would certainly not be a matter of course. This was done as a measure of reassurance to the coloured voters, whose petition had been duly brought before the notice of the Imperial Parliament by Mr. Schreiner and had elicited some degree of sympathy. There were, however, insuperable reasons against interfering with the Bill ; the permission given to the Transvaal and the Orange Free State, as part of the terms of surrender of the burghers in the field on 31 May 1902, that the natives would not be accorded the franchise by any Crown Colony Government, had surrendered the position of interference in the will of the colonists, and it was pointed out that the right of non-Europeans to be elected to the Cape Parliament had remained only a possibility, while, even as matters stood, a person of colour could be elected to the Cape Provincial Council. The theoretical objection that the union had been brought about, save in Natal, by Parliaments which had never consulted the electors on the issue was unanswerable, but it could be pointed out that the same thing had happened in the case of Canada and Nova Scotia, and the approval of the

<sup>1</sup> *Parl. Pap.*, Cd. 5099.

beneath the form and verbiage of the plaint to arrive at what is its real substance, *Bhagwan v. Shivappa*, 101 I. C. 770=1927 Nag. 248; and not merely the reliefs asked for, *Kamala Prasad v. Jagannatha Prasad*, 10 Pat. 432=1931 Pat. 78; or the form in which the relief is prayed for, *Kathiya Pillai v. Ramaswami Pillai*, 56 M. L. J. 394=1929 Mad. 396; *Noksing v. Bholasing*, 1930 Nag. 73; *Sundara Ganapati Mudali v. Deivasikamani Mudali*, 1931 Mad. 94; *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605. The object and nature of the suit has to be ascertained and the cause of action stated by the plaintiff affords the test for the determination of the nature and scope of the suit. *Mt. Manik v. Ranjas Agarwalla*, 1923 Pat. 152. The object and the nature of the suit alone are the determining factors. *Phulkumari v. Ghasi Shyam*, 35 C. 202 (P. C.)

(x) It is the plaintiff's valuation in his plaint that fixes the jurisdiction and not the amount that may be found and decreed by court. *Lakshmanan v. Babaji*, 8 B. 31; *Madho Das v. Ramji*, 16 A. 286.

(xi) Events happening subsequent to filing of plaint cannot be taken into consideration in fixing the valuation. *Ram Adhar v. Ram Shankar*, 26 A. 215; *Govindan v. Perundevi*, 12 M. 136; *Narayana-swami Naidu v. Ramayya*, 26 I. C. 475. But it might be done in exceptional cases to avoid hardship to parties. *Rai Charam v. Biswanath*, 26 I. C. 410.

(xii) In calculating the amount of court-fees payable for a memorandum of appeal, the decision of the trial court may be taken into consideration. *Rangamane v. Jogendra*, 3 I. C. 304. Further when the plaintiff fixes a certain sum as the amount of his claim only approximately or tentatively and prays that the amount of his claim may be ascertained in the course of the suit, the amount found by the court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of appeal. *Gulab v. Abdul Wahab*, 31 C. 365.

(xiii) When a plaintiff claims alternative reliefs, valuation of the claim is the value of the largest of the reliefs claimed. *Kasinath v. Govinda*, 15 B. 82; *Motigavri v. Pranjivan*, 6 B. 302.

(xiv) Where there is in the Court-Fees Act itself a special rule for valuing the property in suits for court-fees, it is proper to take that method of valuation in preference to any other method to get the value where there is no indication that any other method should be adopted. *Venkatanarasimha v. Chandrayya*, 53 M. L. J. 267=105 I. C. 101=1927 Mad. 825. This decision is criticised at length in the commentaries under s. 7 cl. IV-A (Mad.) *supra*.

### **Objections as to valuation and court-fees.**

(1) They must be raised in the trial court and cannot be taken for the first time in appeal. *Wilayab v. Umar-draz Ali Khan*, 19 A. 165; *Rachappa v. Siddappa*, 43 B. 507=50 I. C. 280.

may be pleased to assign to him. On the strength of this provision the usual letters patent were issued to create the office and to assign to the Governor-General the prerogative of pardon. Section 11 of the Act expressly allows the appointment of deputies during temporary absence<sup>1</sup>—presumably from the Union—but without impairing the authority of the Governor-General, which contradicts the restriction of his authority to the area of the Union in s. 9. Section 11 contemplates the appointment of an officer to administer in lieu of the Governor-General from time to time, and the letters patent accordingly gave the administration to the Chief Justice. It was at one time proposed to forbid the administrator to draw any other pay from Union funds when so acting, but this was dropped; as the Act stands, £10,000 is payable annually to the Crown for the salary of the Governor-General, which amount may not be diminished during his tenure of office. Arrangements for division of salary, if the Governor-General goes on leave, thus may be settled privately.

Generally speaking, the Constitution transfers to the Governor-General, or the Governor-General in Council as the case may be, the powers, authorities, and functions vested at Union in the Governors or Governors in Council in the Colonies. There is one exception; by s. 147 the control and administration of native affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General in Council, who shall likewise exercise all special powers in regard to native administration, hitherto vested in the Governors of the Colonies or exercised by them as Supreme Chiefs, and shall control all native reserves, which, if hitherto inalienable save under an Act of the Colonial Parliament, shall be inalienable save under an Act of the Union. This clause negatives the rule under the Natal Constitution of 1893 by which the Governor, in regard to the natives, was left in theory with a duty to act, if he thought fit, against ministerial advice, while a similar position was still more in theory allotted to the Governors of the Transvaal<sup>2</sup> and the Orange River Colony.<sup>3</sup> Section 13 makes it needlessly

<sup>1</sup> Clause v of the letters patent of 1909 allows the Governor-General to continue to administer despite temporary absence to neighbouring territory; clause vi allows him a temporary absence from the seat of Government as well as from the Union.

<sup>2</sup> Letters patent, 6 Dec. 1906, s. 51.

<sup>3</sup> Letters patent, 5 June 1907, s. 53.

on the amount he seeks to recover under the second mortgage plus a fixed fee as for declaration in respect of the prior mortgage. *Iswar Dayal v. Anna Saheb*, 152 I. C. 814=4 A. W. R. 1205.

- (e) Suit for damages for breach of contract. When the plaintiff suing for damages sets off against his claim amounts due by him to the defendant and sues only for the balance, it is sufficient if court-fee is paid on that amount. *Quammuddin v. Delhi Flour Mills Coy.*, 47 I. C. 992; *D. S. Abraham and Co. v. E. Ebrahim*, 2 Rang. 462=84 I. C. 971=1925 Rang. 65.
- (f) Suit for arrears of maintenance or annuity with no claim for future maintenance (as contrasted with suits for maintenance falling under clause ii). *Shahazidi Begum v. Mahbub Ali*, 42 A. 353=55 I. C. 809; *Musst. Bairam Dei v. Ram Sewak Lal*, 107 I. C. 552. See also *Mt. Udobai v. Ram Autar*, 1934 Lah. 150 (claim for declaration of charge on certain properties for a sum of money borrowed for monthly expenses held to be one for arrears of maintenance).
- (g) Suit for recovery of moveables and their value *Amaranath, v. Thakur Das*, 3 A. 131.
- (h) Instalment bond. The fee is payable on the amount claimed and not on the whole amount of the bond *Suttobama v. Jameereddi*, 4 W. R. 12.
- (i) Suit for recovery of commission due. *Harjimal v. Dhanpatmal*, 64 I. C. 626.
- (j) Suit for past mesne profits. *Nandakumar v. Bilas Ram*, 40 I. C. 579.
- (k) Suit for an ascertained sum of money falls within the clause and not under clause (iv) or (f). *Phularchand Coal Coy. v. Barrakar Coal Co.*, 1930 Pat. 605.

For a full discussion as to the court-fees payable on amounts claimed or ascertained as mesne profits, see commentaries under s. 11.

**The following are held not to fall under this clause.**

- (a) Suit for recovery of purchase price was held to be a suit for specific performance of a contract. *Bhashya v. Andalammal*, (1918) M. W. N. 896.
- (b) Suit on a mortgage deed for foreclosure or order for making a mortgage by conditional sale absolute. *Kasinath v. Ganpat*, 18 B. 696.
- (c) Suit for enhancement of rent under s. 7 of the Bengal Tenancy (Amended) Act. *Prasannadeb Raihat v. Purna Chandra Saha*, 61 Cal. 513=1934 Cal. 674.

Parliaments before their expiry, while casual vacancies were to be filled for the first ten years by the Provincial Councils under proportional representation. At the close of the ten years the Senate was reconstituted by election by the Provincial Council sitting with the members of the Parliament for the province, thus constituting definitely a provincial body. Similarly, in fixing the number of members of the House of Assembly, the rather remarkable step was taken of according to the two small provinces a minimum membership irrespective of their claims on the score of population. The provisions for revision of numbers in accordance with the quinquennial census up to a maximum of 150 members are further illustrations of respect for the provincial divisions.

The other feature of special interest is the acceptance of the provincial franchises as the means of deciding the vote. This was rendered inevitable by the fact that the Cape would not surrender its native franchise nor the other provinces accept it, and so the matter was left to the existing practice. This was done, though not for racial purposes, in Canada during its early years, and then from 1898 until 1917. The native franchise in the Cape was safeguarded by the requirement that it could be altered only by a Bill passed in joint session of the two Houses by a two-thirds majority of the total numbers of the two Houses. The Bloemfontein Convention agreed to reservation of such Bills, but, in view of doubt as to the legal position, special steps were taken to insert the requirement of reservation in the royal instructions. The uneasiness felt at the time as to the possibility of the growth of the design of destroying the vote was shown to be justified in 1925, when General Hertzog, taking up a suggestion of the Native Affairs Commission of 1903-5, pressed for the desertion of the native franchise, offering instead to the natives in all four provinces the privilege of voting for two (in Natal one) special European representatives. Definite plans for this end for enactment in 1927 were tabled in 1926.<sup>1</sup> As already mentioned, the exclusion of non-Europeans from membership of Parliament was expressly enacted, though if it were inserted under the fear lest, under

<sup>1</sup> The coloured people of the northern provinces are likewise conceded one European elected by themselves. De Villiers was far too sanguine of the safety of the vote; cf. Walker, pp. 446 ff.

on the safer side by making a liberal claim, and as ten times the annual claim, will usually be a comparatively stiff figure the fee will be felt as a heavy burden especially by Hindu widows who figure as plaintiffs in such suits. In this respect, the Madras amendment reducing the value for court-fee in suits for maintenance, to the amount claimed to be payable in one year, obviates a real hardship and does away with at least one of the several cases of unequal incidence of the fee the existence of several of which is one of the glaring defects of the existing Court-Fees Act.

**Suit for arrears and future maintenance.**—Where the claim is not only for the declaration of his right to maintenance and the rate of maintenance and also combined with it is a claim for the recovery of a specific sum as arrears of maintenance, then the fee payable is under both the clauses i and ii, the former clause applying to the claim of arrears and the latter clause for the computation of the value of the claim for future maintenance. *Garya Bai v. Har Knar*, 6 A. W. N. 228; *Narasimhacharya v. Rayacharya*, 5 B. H. C. R. 55 (A. C.) See also *Shahzadi Begum v. Mahbub Ali*, 42 A. 353 = 55 I. C. 809.

**Maintenance Decrees.**—Where the decree directs that a specific sum should be paid to the decree-holder, the latter can realise his or her dues by way of execution of the decree and no fresh suit is to be filed. *Ashutosh v. Lakhimoni Devi*, 19 C. 139; *Lakshmi Bai v. Madhava Rao*, 12 B. 65.

But when there is simply a declaration of the right of maintenance without any direction to the judgment-debtor to pay the maintenance amounts periodically to the decree-holder, there is obviously no executable decree (*Sri Krishna v. Singara*, 4 M. 21) and a suit for the recovery of the dues will have to be filed. *Madhava Rao v. Rama Rao*, 22 B. 267; *Vishnu v. Manjamma*, 16 A. 179.

On the analogy of the provision in decrees in Scheme suits, there may be a provision in a maintenance decree giving liberty to the parties to apply to court for the modification of the decree by the enhancement or reduction of the rate due to change of circumstances of the judgment-debtor or the decree-holder, either for the better or worse as the case may be. *Gopika Bai v. Dattatriya*, 24 B. 336. If there is no such liberty given to the party, a suit always lies for the said purpose. In such cases, the subject-matter of the suit is clearly the amount by which the maintenance is sought to be increased or decreased. And the valuation is ten times the amount of difference for one year except of course in cases covered by the Madras amendment in which case it is simply the amount of difference for one year in cases of suits for maintenance. This appears to be the proper course. But so far as decided cases go, while this principle of valuation is approved of and followed in the cases of suits by maintenance decree-holders for enhancement of the

in the shape of colonial institutions. The provinces, as we have seen, represent a compromise between the federal and union ideas. Natal fought to save whatever she could of federal principles, while the other delegations were anxious to infuse into the constitution, as far as possible, a really unitary aspect. Therefore it was decided that the provinces were not to be allowed to set up as minor Parliaments, while on the other hand they were not to be degraded to the level of large local government areas.

At the head of each provincial administration is placed an Administrator, whose appointment is based on the Canadian model. Thus he is selected by the Governor-General in Council, receives a salary marking his office as of high importance, and is not to be removed for five years, save for cause assigned to be communicated to both Houses within a week. But otherwise the position is inferior by far to that of a Lieutenant-Governor. In lieu of an Executive Council the Administrator is associated with an Executive Committee numbering four, elected after each general election on the system of proportional representation with the single transferable vote, by the members of the Provincial Council. They receive a salary fixed by the Council and hold office until the selection of their successors, and are, of course, eligible for re-election. They need not be members of the Council; if not, they may sit and speak, like the Administrator, but are like him not able to vote. Any casual vacancy is filled by the Council, if in session; if not, until it meets by the Committee, and, if at any time the number of Committee members falls below the quorum, then the Administrator must summon a meeting of the Council to fill the vacancies. Pending such election the Administrator acts alone. The Administrator, who counts as one of the Committee, has beside his ordinary vote a casting vote in case of equality of votes, and the Committee may make rules for the conduct of business, subject to the approval of the Governor-General in Council. The sphere of the Committee's authority is defined by the transfer to it of all the powers of the Governor or Governor in Council or any minister of a colony in respect to matters upon which the Provincial Council is empowered to make ordinances. In all matters not reserved to or delegated to the Council by the Act, the Administrator shall act on behalf



that maintenance clause was not incorporated in the deed, the suit though relating to a claim for maintenance was held to be a suit for declaration with consequential relief. *Bari Bahu v. Kundan Singh*, 71 I. C. 31.

(2) Where the plaintiff asked for a declaration as to his right to an office and for payment annually of his emoluments attached to the said office, it was held that the valuation cannot be made under this clause as the right to his emoluments is conditional on performance of service which the plaintiff may by reason of his death or dismissal never perform. *Krishna v. Ravi Varma*, 8 M. 384.

(3) Where the suit was for a declaration that the surplus offerings of a certain shrine were payable to the plaintiff by the defendant, the successor in office, it was held not to fall under the clause but taxable under Article 17 (iii) of Schedule II. *Garijannud v. Sailajanand*, 23 C. 645.

(4) Suit for recovery of a sum as damages for use and occupation or for assessment of rent does not come under this clause. *Kalicharan v. Kesho Prasad*, 51 I. C. 15 = 4 Pat. L. J. 561.

(5) Suit to establish or negative a right of occupancy does not fall under this clause. *Ratan Singh v. Khan Karam*, 40 A. 358.

**Valuation and jurisdiction.**—According to s. 8 of the Suits Valuation Act, the valuation of suits under this clause is the same for court-fees and for jurisdiction. In a suit where an annuity is sought to be declared as a charge upon property, the value of the annuity and not that of the property to be charged determines the valuation of the suit. *Mira Abid Hussain v. Ahmad Hussain*, 28 C. W. N. 289 (P. C.)

### PARAGRAPH III: SUITS FOR OTHER MOVEABLE PROPERTY HAVING A MARKET VALUE.

#### Scope of the clause.

This clause provides for suits for moveable property other than money. Suit for money is provided for in paragraph (i). It is only where the moveable property has got a market-value, that this clause is applicable. Where it has no market value as for instance in the case of documents relating to title, provision is made in paragraph iv (a).

**Market-value.**—The market-value of a property is the value which it would fetch in the open market, and this must be determined with reference to the circumstances existing at the date of the plaint. *Manmathanath v. Secretary of State*, 25 C. 194 (P. C.); *Rajagopala v. Ramasubramania*, 74 I. C. 198.

(8) roads, outspans, ponds, and bridges, other than bridges connecting two provinces; (9) markets and pounds; (10) fish and game preservation; (11) the imposition of punishment by fine, penalty, or imprisonment, for enforcing any law or any ordinance of the province made in relation to any matter coming within any of the classes of subjects enumerated; (12) generally all matters which, in the opinion of the Governor-General in Council, are of a merely local or private nature in the province; (13) all other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the Provincial Council.<sup>1</sup> Moreover, a Provincial Council is empowered by s. 87 to recommend to the Parliament the passing of any Act on a subject on which the Council is not empowered to make ordinances, and provision is made by s. 88 for the use of the Provincial Council to take evidence for or against any private Bill which must be promoted in the Parliament, and the Parliament may dispense with taking evidence otherwise. The Bills passed by the Councils must be presented for assent to the Governor-General in Council, who must either assent, decline to assent, or reserve within a month of presentation; on reservation assent must be given, if at all, within a year from presentation. The Administrator has no veto and no vote in the Council.

The supremacy of Parliament is undoubted, and the ordinances of the Councils, despite the assent of the Governor-General in Council, are valid only in so far as they do not run counter to any Act. Thus the Parliament may at any time, without exceeding its legal or constitutional power, override any provincial ordinance, and in point of fact the Transvaal Gold Profits Tax was thus disposed of by the Union, by Act No. 5 of 1921. But naturally the Union power could not be used in

<sup>1</sup> It has been decided (*R. v. Adam*, [1914] C. P. D. 802; *R. v. Maroon*, [1914] E. D. L. 483) that if power is given to raise revenue from any source and to legislate by issue of licences, the power extends not merely to regulate and manage revenue but to regulate the trade. A province may give a municipality any powers natural to such a body though not possessed by the province (*Williams v. Johannesburg Municipality*, [1915] T. P. D. 362; *Middelburg Municipality v. Gertzen*, [1914] A. D. 544) but not powers of its own not appropriate to a municipality (*Maserowitz v. Johannesburg Town Council*, [1914] W. L. D. 139. See *Groenewoud v. Innesdale Municipality*, [1915] T. P. D. 413; *Head & Co. v. Johannesburg Municipality*, [1914] T. P. D. 521).

be held to fall under clause iv (α). That is, it is held that they are incapable of valuation. It is always a question of fact whether any property sought to be recovered has or has not a market-value. When no relief is sought under the negotiable instrument but the same is sought to be recovered as a chattel, the approved view seems to be to hold that it has no market-value. A possible view that a fixed fee under Sch. II, Art. 17 may be levied in such cases, and that the subject matter is incapable of valuation cannot be accepted as there is a specific provision in the Act, *viz.* S. 7 cl. iv (α) which provides for cases where the moveable has no value. The fixed fee will have to be levied only in the absence of any other specific provision in the Act.

#### PARAGRAPH IV: SUITS WHERE THE RELIEF IS NOT PROPERLY ASSESSABLE IN MONEY.

“This consists of six clauses referring to six different classes of suits and all the suits in the paragraph are claims for reliefs not properly assessable in money” per Batchelor, J., in *Dagdu v. Totaram*, 33 B. 658. They are suits for moveable property which have no market-value, for enforcing a right to a share in joint family property about the possibility of whose being properly valued there is quite a conflict of decisions, suits for declaratory decree and consequential relief which have given rise to numerous divergent views as to what is the primary and what is the auxiliary relief, for injunction and for easement the value of which is not capable of being correctly estimated and for accounts which at best could only be approximately valued. Consequently in all these cases the plaintiff or appellant is given the liberty to value his claim as he chose and this determines both the court-fee and the valuation of the suit for jurisdiction. “The nature of the suits comprised in the six articles of that clause which in some instances renders it impossible, and in others either impossible generally or extremely difficult to lay down an even approximately fair *ad valorem* scale as a means of fixing the court-fee in such suits, would appear fully to account for the Legislature leaving it to the plaintiff to name the valuation,” per Westropp, C. J., in *Manohar v. Bawa Ram*, 2 Bom. 219. This has been found by experience not to work well in practice. The reason for same is obvious, as every plaintiff or appellant always endeavours to shape his action in such a way as to bring it within the four corners of one or the other clause of this paragraph to enable him to put his own valuation on the claim both in the matter of payment of fees and for the purpose of choosing his forum. In their efforts to defeat such abuse of the privilege granted and a gross under or over valuation of the claim and at the same time give effect to the actual words of the section which make the plaintiff or appellant the sole person entitled to fix the valuation, courts have to strain the plain language of the section and this has resulted in a good deal of

At the same time provision was made for the grant of regular subsidies towards the annual expenditure of the provinces of a total of half the ordinary expenditure subject to certain limits as to increase of such expenditure. Further, certain revenues of the Union after collection were to be paid to the provinces, namely, those derived from transfer duties in respect of immovable property, liquor licences, and, in the case of the Transvaal, native employment licences. In the case of Natal a special grant was made, equal to the amounts derived by the municipal and local authorities from trading and liquor licences. In calculating expenditure, the sum paid by divisional councils, school boards, or native councils, as in the Cape, out of local revenue, were to be counted. Grants of £100,000 annually were allocated to the Orange Free State and Natal to make up their lack of revenues. Capital expenditure was to be met by loan from the Union only, at such rate of interest and sinking fund as might be prescribed by the Union, these charges to count as part of the expenditure for purposes of subsidy. A distinction was laid down by the Act between capital and normal expenditure, to ensure that minor repairs should be met from normal expenditure.

The authority of the provinces as to taxation<sup>1</sup> on their own account was defined. They were allowed to derive revenue from certain fees, dues, and licences, including hospital fees, education fees in respect of elementary education, totalizator fees, auction dues, game licences, certain dog licences, trade licences, and other miscellaneous receipts. The power of the Council in these matters was extended to altering existing Union laws in respect thereof. But a Council was forbidden to make an ordinance relating to licences to trade so as to take away any right existing at the commencement of the Act to appeal to a court of law against a refusal to renew any licences, this

<sup>1</sup> The provinces can authorize municipalities to raise rates, and can invalidate (Transvaal Ord. No. 1 of 1916, s. 12) any contract providing for the transfer of obligation to pay owner's rates to a lessee; *Marshall's Township Syndicate v. Johannesburg Consolidated Investments Co., Ltd.*, [1920] A. C. 420. The power to impose a poll-tax on natives (Transvaal, 1921, No. 7, c. 2) was ruled invalid in *Transvaal Province v. Letanka*, [1922] A. D. 102. Municipalities can be authorized (e.g. by Transvaal Ord. No. 9 of 1912) to differentiate between white and coloured persons or Asiatics as to use of trams; *George v. Pretoria Municipality*, [1916] T. P. D. 501.

*Jogeshara v. Durga Prasad*, 36 A. 500; *Shama Prasad v. Sheo Prasad*, 41 I. C. 95; *Pandit Brij Krishna v. Chowdhuri Murli Rai*, 56 I. C. 315; *Guruvaiamma v. Venkatakrishnama*, 24 M. 34; *Arunachalam v. Rangaswamy*, 29 M. 922 (F. B.) (where their Lordships stated that they are not going to reopen the matter); *Thakur Das v. Daulat Ram* (memorandum of appeal in account suit) 91 I. C. 32=1926 Lah. 189; *In re Kalipad Mukerjee*, 58 C. 281; *Maung Nyi Maung v. Mandalay Municipal Committee*, 12 Rang. 335=1934 Rang. 268.

"The plaintiff is entitled to exercise the privilege of valuing his relief at any figure he chooses." *Rikhi Kesh v. Mela Ram*, 94 I. C. 650=1926 Lah. 242; *Vachhani v. Vachhani*, 33 Bom. 307; *Balakrishna v. Janakbai*, 44 Bom. 351; *Burru v. Lachhman*, 111 P. R. 1913; *Bura Mal v. Tulsi Ram*, 9 Lah. 366=107 I. C. 609=1927 Lah. 890; *The Official Trustees of Bengal v. Gobardhan*, 33 C. W. N. 231; *Jhanda Singh v. Gulab Mel Bhagwan Dass*, 137 I. C. 240=33 P. L. R. 488; *Ghulam Haider v. Bishambar Das*, 140 I. C. 73=33 P. L. R. 458; 34 C. W. N. 870; *Basanta Kumari Debya v. Nalini Nath Bhattacharjee*, 57 C. L. J. 465. Of course the whole difficulty arises when courts detect a plaintiff or appellant avoiding the payment of a proper fee by taking shelter under this paragraph that gives them the power to fix their own value for their claim, and they feel it their duty to prevent such an evasion. This is well brought out by the observations of their Lordships in the 6 C. L. J. case where they realise the difficulty of the position and make the following guarded enunciation of the law.

"The Court *will be slow to question* the propriety of the valuation put by the plaintiff on the relief sought; but we do not think it can be affirmed as an inflexible rule of law that it is not open to the court to revise the valuation put by the plaintiff when it is conclusively established that it is arbitrary and improper." Hence also those decisions that invoke the aid of s. 151 C. P. C. to justify their interference in the matter of the plaintiff's valuation of a suit. But so far as the interpretation of the section is concerned there appears to be no difficulty. The plaintiff or appellant is given full discretion in the matter of valuation. If it leads to abuse, then it is for the legislature to step in and add a proviso to the effect that where the valuation is improper or inadequate, courts could have the same rectified. [This is done in Bengal, as noticed farther below.] The Court-Fees Act is a fiscal enactment and the principle is well recognised that it should be strictly construed and in favour of the subject. Consequently where the language of the section is plain, the importation of any limitation on the discretion allowed to the parties, is not justifiable. If the section gives a loop hole to an unscrupulous plaintiff to escape payment of the proper fee, this is again only one of the several defects cropping up in various portions of the Act, to mend or end which is more appropriately the province of the legislature than that of courts of law.

administration, including liquor licences ; dog, fish, and game licences ; motor taxes ; wheel tax ; entertainment tax ; taxes on racing (totalizator, betting, bookmakers, race-course admission) ; immovable property tax ; education fees for other than compulsory education ; and hospital fees. Transfer duty should remain an assigned revenue. The list of sources of revenue inappropriate for provincial administration included native pass fees ; trade and occupation licences ; auction dues ; poll tax ; education tax ; crayfish canning profit tax ; corporation and company tax ; employers' tax. Trade and occupational licences should be made uniform by Union legislation. To make up for loss of revenue the provinces should receive a definite subsidy, based on the cost of education on the theory of an allowance per head of average attendance. Loans should be made to meet the deficits of the provinces, and, in the Cape, of the school boards, to be repaid in ten years. Loans should be provided by the Union as before, but the school authorities should be deprived of power to borrow. Co-operation between the central and provincial Governments was strongly urged, and the creation of local authorities with definite responsibilities for education, hospitals, and roads, and with rating powers, the chief object to be immovable property ; such authorities were specially needed in the Transvaal and Orange Free State, in view of the scanty development there of local government. The Commission, however, insisted that it was not competent to make final recommendations on educational policy, and that matter was given to another Commission, which reported in favour of compulsory education for all European children from age 7 to 15, recommending that the Government should assume the complete cost of such education so far as it was reasonable, adopting the basis of per head rates fixed by the Finances Commission. The reports of these bodies were discussed in January 1924 by the Union Government and the provinces. The result was negative, Natal refusing to accept the £14 per head grant recommended as adequate, while all were agreed in denouncing the essential suggestion of the Commission for a tax on land, which the Boer regarded as almost sacrilegious. The Government, therefore, brought a Bill which accomplished little more than making uniform teachers' salaries as a means of economy, and its failure to grapple with the problem

title to immoveable property has no market-value of itself. *Jugger-nath v. Brijnath*, 4 C. 522. A question of some difficulty arises where documents having a market-value are claimed as part of the title deeds, for instance mortgage bonds, which as usual in such cases, are discharged or cancelled instruments but not necessarily so. Where any document is claimed only as part and parcel of the title deeds, it appears that such document could not be singled out and made liable to be valued under paragraph (iii). A suit for declaration that the person really interested in a promissory note is the plaintiff and not the defendant, though it is in the defendant's name, and for recovery of the note but not for the recovery of the money due thereunder, in which the maker of the note is impleaded as defendant so that the finding may be binding on him also and there is no prayer for the recovery of the money due on the note from him, falls under s. 7, cl. (iv) (a) and not s. 7, cl. (iii) and the plaintiff has got to state the amount at which he values the relief. *Venkata Rao v. Sesharathamma*, 67 M. L. J. 680 = 1934 Mad. 730.

#### CLAUSE (b): RIGHT TO SHARE IN JOINT FAMILY PROPERTY.

**Divergent views about application of section.**—There is a conflict of decisions as regards the scope and application of this clause. The difference of view relates (1) to the class of suits to which this clause applies, (2) the method of valuation both for court-fees and jurisdiction. The question that arises is whether a suit for partition by a coparcener of joint family property is to be valued for court-fees as per section (iv) (b) or under Article 17 (6) of Schedule II and again if Article 17 (6) does not apply whether the suit, should be valued under paragraph (iv) (b) or (v) of s. 7. As already set out, it is the plaint and plaint alone that should be looked into. Even if the plaintiff's status as a coparcener is denied in the written statement court-fee is payable under (iv) (b) and not under (v). *C.R.P. 1903 of 1930, Madras High Court.*

**Joint family property.**—It is agreed on all hands that the clause applies only to cases where a relief is claimed in respect of joint family property and not to any kind of property. The word "Joint Family Property" is a technical expression under the Hindu Law.

**Suits for partition of joint family property.**—The views of the High Court of Bombay and Madras exemplify two divergent views as to how a suit for partition of joint family property is to be valued.

**Bombay.**—The leading case on this point is *Dagdu v. Totaram*, 33 B. 658. That was a suit for partition of immoveable property. The following extracts from the judgment of Batchelor, J., set out the prevalent view in Bombay. "Paragraph (iv) comprises

or sell wild flowers ; (3) motor or mechanically propelled vehicle licences ; (4) wheel tax on any vehicles ; (5) amusements or entertainments tax ; (6) auction dues ; (7) totalizator licences and betting tax ; (8) taxes on persons, other than companies, and on their incomes ; (9) tax on companies, other than mutual life insurance companies ; (10) tax on ownership of immovable property but not on transfer or sales thereof ; (11) licences in respect of importation for sale of goods from beyond the Union, subject to a maximum of £310 ; (12) miscellaneous receipts in respect of matters entrusted to the province. Income tax is limited to 20 (or 30 if unmarried) per cent. of the amount of Union income and super tax levied on the portion of income derived from sources within the province, company tax to 6*d.* per £1 of taxable income arising within the province, but the Transvaal, which is deprived of the employer's tax raised under Ordinance No. 8 of 1922, is permitted to levy up to a shilling per £1 on the profits of financial companies under Ordinance No. 8 of 1923. It is further provided that, if any of the assigned revenues are collected by the Union Government, they are to be paid over to the Provincial Revenue Fund with or without deduction for cost of collection as may be arranged. The difficult question of licences to exercise a trade, profession, or occupation is dealt with by giving the Union Parliament alone the power to fix the amounts to be paid for such licences, but the amounts raised in each province are payable to the province, and the province may authorize a municipality to exact fees in respect of any trade or occupation which for special reasons it considers should be subject to inspection or supervision by the local authority. Moreover, the provinces remain fully competent to regulate the issue of licences and to provide for inspection, registration, and control of licences, subject only to the preservation of any right of appeal to a court of law against a refusal to renew a licence in existence on 1 April 1913.

The Act also adds town planning to the matters which may be placed under provincial authority, and extends power as to control of townships in Natal, and generally as to Crown lands transferred with places of public resort or of scientific or historic interest.

Control over the finances of the provinces is provided by the creation in each of a Provincial Revenue Fund into which are



**Madras.**—So far as Madras is concerned, the matter was fully discussed in the Full Bench decision in *Rangiah v. Subramaniam*, 21 M. L. J. 21=9 M. L. T. 3. The Bombay decision of *Dagdu v. Totaram*, was considered and dissented from. White, C. J., in his leading judgment observed thus "I think s. 7 (iv) (b) applies when the right which is sought to be enforced is a right to share as a separate sharer in joint family property; in other words, it applies to the ordinary suit for partition. It was argued that s. 7 (iv) (b) only applies when the right which is sought to be enforced is a right to share as a joint sharer in joint family property but it is not likely that the legislature would have intended to make specific provision for a comparatively rare form of action and to make no specific provision for a common form of action." Krishnaswami Ayyar, J., who concurred in the view taken by the C. J. has exhaustively reviewed the whole case law on the point. "The plaintiff being in joint possession of the whole, whether that possession is actual or constructive, seeks to convert that into separate possession of his share. It may therefore be said that the value of the subject-matter in dispute is the difference between the value of the separate possession of the share and the value of his joint possession of the whole or as it has well been put in *Rajendra Lal Goswami v. Shamacharan*, 4 C. L. R. 417, 'It is the value of the convenience of changing the form of the enjoyment of the plaintiff's share.' It seems to me that it may at once be conceded that it is not possible to estimate the difference in value of this convenience in the form of the enjoyment at a money value. But this concession is not enough to settle the application of Art. 17 (vi) of the II Schedule. It is further necessary to bring the case within the Article that it is not otherwise provided for by the Act. Section 7 (iv) (b) empowers the plaintiff to state the amount of value of the relief sought. Section 7 (v) prescribes special rules for ascertaining the value. But in both the cases the fee payable is *ad valorem* under Article I of Schedule I of the Court-Fees Act. It has been argued that the language of the clause is not 'to enforce the right to a share in the property but 'to enforce the right to share'. This difference it is said, indicates that the clause does not deal with the common suit for partition amongst the members of a Hindu family, but with the possible case of the coparcener suing for joint possession where he has been excluded from it or for participation in the profits of the common property or it may be for a mere declaration of his right to joint possession coupled with a claim to participation in any benefit to which the joint family is entitled. Without in any way repudiating the possibility of such cases being within the scope of the clause in question (as to which compare *Gundo Anandarao v. Krishnarao*, 4 B. H. C. R. A. C. 55 and *Muttakke v. Thimmappa*, 15 M. 186 at page 191) we may ask the question whether it is at all likely that special provision is made in this clause for such rare cases without dealing with the common case of a suit for partition by a coparcener in possession. It is argued

Committee has normally patched up its disagreements on the basis of give-and-take without logic—or justice—and the people have felt just indignation at their inability to secure a clear-cut policy, save in those cases, such as Natal and the Free State, where one party is predominant, and there is no real Opposition. On the other hand, in the Cape and the Transvaal the provincial elections of 1923 resulted in the return of parties so balanced that the Cape and Transvaal Councils elected Committees with two members of the South African party and two Nationalists, putting the deciding power into the hands of the Administrator. This officer thus becomes, as in the Cape, the real Government, which was neither intended nor desired. Moreover, the presence of political feeling on the Councils is wholly unfavourable to smooth working, as was seen in the period 1920–3 when the Transvaal Committee was composed of two Nationalists and one Labour supporter to a member of the South African party. One aspect of the situation was shown on 29 July 1924, when General Hertzog was questioned on the position of Administrators. He laid down the view that in choosing an Administrator, who must according to the Constitution preferably be chosen from the residents of the province, it was proper to appoint some person who was in general harmony with the views of the majority in the province at the time of his appointment. He need not, therefore, necessarily be in harmony with the views of the Government of the Union for the time being, so long as he was content to work loyally in the duties of his office. This was further elucidated by the contrast drawn between the Administrators and the head of the Government of South-West Africa, it being made clear that in this case it was essential that he should be in close harmony with the Union Government. The distinction rests on the essential fact that the Administrator ought primarily to act on the wishes of the people as represented by the majority in the Council, while the head of the Administration in South-West Africa acts as the representative of the mandatory power.

The financial position of the provinces is clearly unsatisfactory, as there is too much divorce between the provision of funds and the responsibility of spending them. It is natural that there should have been suggestions for the reduction of the provinces to the status of local councils ; one Commission

28 A. 340, the remarks of Garth, C. J., are quoted with approval. But the learned judges decided that an *ad valorem* fee was leviable under the circumstances of the case. The plaintiff appears to have been a purchaser of the undivided share of a coparcener and the suit was brought to establish his title and recover possession of his share, the claim of partition being added merely to make the relief sought effectual.' Such a case is easily distinguishable from the suit of a coparcener in joint possession, who merely seeks to convert his joint possession into separate enjoyment. In *Belvant Ganesh v. Nana Chintamani*, 18 B. 209, also, the dictum of Garth, C. J., is quoted with approval though a different decision was arrived at on what ground it is not easy to say." Finally his Lordship held that the court-fee in a suit for partition should be fixed under Art. 17 (vi) of Schedule II. But the prevailing view is that of the majority and so far as Madras is concerned where the plaintiff, a coparcener files a suit for partition of joint family property *alleging that he is in possession* thereof whether actual or constructive along with the other coparceners, clause (iv) applies. See for instance the recent decision in *Annamalai Mudaliar v. Kristappa Mudaliar*, 67 M. L. J. 858 (valuation in such a suit held to rest with the plaintiff and a court-fee of Rs. 10 held to be sufficient).

**Bengal.**—A person is not entitled to partition until and unless he is in possession of his share. But if he is out of possession, he is to bring a suit to get possession of his share and in that case he will have to pay court-fee on the market value of that share. But where plaintiff claims partition of a residential house on the footing that he is actually sitting there it is unnecessary to make him pay court-fee to recover possession. *Nanda Lal v. Kalipada Mukherji*, 54 C. L. J. 317=36 C. W. N. 291=1932 Cal. 353. The position is made clear by the Bengal Amendment Act VII of 1935. Cl. iv (b) of s. 7 the language of which has given rise to a conflict of decisions as to the class of suits to which the clause applies and the method of valuation to be adopted according to that, has been deleted and in its place a new entry V-A has been added to Art. 17 of Schedule II, by which a fixed fee is made leviable in a suit for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner. If in such a suit, the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner a new clause VI-A added to s. 7 provides that the suit shall be valued according to the market value of the share in respect of which the suit is instituted. Thus whatever distinction there might have been under the original Act between suits for partition of joint family property between coparceners of a Hindu joint family and suits for partition of joint property between co-owners has been abolished, the only distinction retained being that between suits for partition where the plaintiff is in joint possession of

sessions ; they were liable to dissolution by the Governor, but not by the Superintendent who acted the part of Administrator, but was elected as soon as might be after the dissolution or expiry of each Council by the electors for the Council. His election could be disallowed by the Governor, and he could be removed from office on an address from the Provincial Council. His functions were in effect those of a Lieutenant-Governor, and he acted on that principle, appointing and dismissing ministers for provincial affairs. He had the right to assent to, reserve, or disallow, legislation ; the Governor could also disallow or assent to reserved Bills in three months, a provision inserted in the Imperial Act in its passage through Parliament, and depriving the Imperial Government of effective control over legislation by the provinces. The Council had legislative powers on all matters of provincial interest, excluding customs ; Courts civil or criminal, save as regards offences punishable summarily ; currency ; weights and measures ; the post office ; bankruptcy ; beacons, lighthouses ; shipping dues ; marriage ; Crown lands or native lands ; legislation differentially affecting non-Europeans ; criminal law, save as regards summary punishment of offences ; the law of inheritance and wills. On the whole, the provincial system proved needlessly clumsy and cumbrous, and its replacement by a system of municipal government was not seriously regretted.

### § 5. *The Judiciary*

General Botha in 1907<sup>1</sup> at the Imperial Conference pressed for the creation in South Africa of a Court of Appeal to obviate the multiplicity of appeals then possible to the Privy Council, and to render more regular the interpretation of the common law of South Africa, Roman Dutch law. The Act of 1909 met fully this desire by creating a single Supreme Court for the Union, consisting of an Appellate Division with head-quarters at Bloemfontein, four Provincial Divisions absorbing the Supreme Courts of the Cape, the Transvaal, Natal, and the Orange River Colony (styled there High Court), and local divisions comprising the Court of the Eastern Districts of the Cape, the High Court of

<sup>1</sup> *Parl. Pap.*, Cd. 3523, pp. 207 ff., Cd. 5745, p. 230 ; *The Government of South Africa*, i. 56 ff. ; ii. 14 ff. On the old Courts and reforms, see Walker, *Lord de Villiers*, pp. 72 ff., 97 ff., 420, 438, 480, 493 ff.

suit it is found as a fact that there has been an actual ouster, that the defendants have been excluding the plaintiff from all participation in the family profits because they claimed them all for themselves and none for him, then different considerations would arise and the question will have to be decided whether the plaintiff has been prior to suit, definitely ousted from even joint possession of the family property and whether he should therefore pay an additional court-fee, as in a suit for ejectment, under s. 7 (v). In the Full Bench case of *Rangiah Chetty v. Subramania Chetty*, 21 M. L. J. 21 = 8 I. C. 572 the question whether clause iv (b) would apply to a case where a coparcener is excluded even from joint possession and is suing for joint possession was raised and not decided, *the deciding factor indicated being whether the suit can be treated as a suit in ejectment*. I cannot see how the present suit can be treated as a suit in ejectment, since the plaintiff sues on the footing that the defendants admit they are holding the plaintiff's share for him and are not resisting his claim to joint possession at all, but only contest the nature and extent of the assets and mode of division."

**Suit for partition by plaintiff not in possession of the property.**—The question was raised but not decided in *Rangiah Chetty v. Subramania Chetty*, 21 M. L. J. 21 in which it was observed as follows:—"It is not necessary to express any opinion whether a suit for joint possession by a coparcener excluded from possession would fall within s. 7 clause iv (b) or s. (v) of the Court-fees Act. When such a question arises it will be material to consider whether a suit for joint possession is not as much a suit for possession as a suit for exclusive possession and whether both kinds of suits being in ejectment, they should not both be held to fall within s. 7 clause (v)." The Calcutta view was s. 7 clause iv (b) referred to a suit for joint possession by a coparcener who was out of possession, *Bidhata Rai v. Ramacharita Rai*, 6 C. L. J. 651. The leading case is *Kirtec Churn Mitter v. Arinath Dev*, 8 C. 757. That was a case for partition by a coparcener who was in joint possession of the property with the other coparceners. Garth, C. J., stated the law applicable to the case as follows: "If the plaintiff's suit had been to recover possession of or establish title to a share which he claims in his property he must have paid an *ad valorem* stamp fee upon his value of that share. But as he is already in possession of his share all that he wants is to obtain a partition, which is merely, as explained by the learned judges in the case of *Rajendra Lal Goswami v. Shama Charan*, 5 C. 188, to 'change the form of his enjoyment' of the property or in other words, to obtain a divided instead of an undivided share. It seems to me impossible to say what will be the value to the plaintiff of this change in the nature of his property and I therefore think that a stamp-fee of Rs. 10 is sufficient." So also is the view of Patheram, C. J., in *Mahendro Chandra v. Ashutosh*, 20 C. 762. "So far as the plaint is concerned the only relief which is sought is partition of property which the plaintiff says

be brought by special leave ; Parliament may make laws limiting matters in respect of which such an appeal may be sought, but this is subject to the obligation of reservation of such a Bill. This prohibition has no reference to appeals under the *Colonial Courts of Admiralty Act*, 1890.<sup>1</sup> The restriction, though unusual, is in harmony with the finding of the Colonial Conference of 1907 in favour of appeals from the South African Colonies coming only from one Court of Appeal. There is, of course, a special propriety in the decision, because the Privy Council is inevitably not very strong in matters of that quaint survival, Roman Dutch law.

The Act transferred the existing judges to the appropriate divisions of the Supreme Court, giving the style of Judge Presidents to the former Chief Justices, with permission to retain the former style for the duration of their appointments ; the power to create new judges, including the Chief Justice of South Africa—the appointment to which office was conferred on Lord de Villiers—was given to the Governor-General in Council. The Appellate Division was primarily to consist of the Chief Justice, with two ordinary judges of appeal and two additional judges assigned from the provincial or local divisions, but by Act No. 12 of 1920 two further ordinary judges were substituted, the belief recorded in the Act of 1909 that the number of judges required could be reduced turning out to be idle. Five members of the Court must sit on an appeal from two or more judges, in other cases three, but no judge may sit on appeal from himself. The process of the Court runs throughout the Union, and its judgements or orders fall to be executed as if they were issued by the provincial division of the Supreme Court. Similarly, it was provided that the judgement or order of any provincial division might be executed in any other division by production of a certified copy to the registrar, and proof that the judgement or order was not satisfied, while each provincial or local division was given authority to transfer cases to another division if of opinion that they could more conveniently be tried therein. The power of making rules of procedure was given by the Act to the Chief Justice and ordinary judges of the Appellate Division, and to the Chief Justice and judges of the Supreme

<sup>1</sup> So in Canada ; see *Richelieu and Ontario Navigation Co. v. Owners of SS. Cape Breton*, [1907] A. C. 112.

sion is not entitled to sue for partition without asking for possession of the property in dispute, unless for special reasons the court deems it proper to allow an amendment of the plaint on payment of the requisite Court-fee stamp. *Asa Ram v. Jagan Nath*, 15 Lah. 531 = 1934 Lah. 563 (F. B.)

**Different kinds of partition suits.**—The above quoted decisions clearly indicate that there is a sharp difference of opinion on this subject of valuation of a suit for partition. There are several kinds of such suits. It may be a coparcener that files the suit or it may be a stranger who has purchased the share of a coparcener. Or it may be the converse case of coparcener suing not another coparcener but a stranger. In both these cases it may be either a plain suit for partition or it may be in essence a suit for a declaration of title in the guise of a partition suit. Again the plaintiff coparcener may be in joint possession with the defendant or he may be out of possession. If he is in possession it may be either actual or constructive. If it is constructive then it is a matter of evidence or of presumption which is of course rebuttable. There might already have been a division of status and the suit may be one for the division of the property by metes and bounds. The plaintiff may sue either for joint possession along with the defendants or he may sue for partition and separate possession of a share. The court-fee payable varies in all the above cases and with regard to the prevailing views of the several High Courts. But generally they may be summarised as follows.

**(1) Where the plaintiff is a stranger.**—Where a purchaser of the share of a coparcener files a suit against the other coparceners for partition and possession, s. 7, clause (iv) (b) applies and not Art. 17 (vi) of Schedule II. *Walliulla v. Durga Prasad*, 28 A. 340. But this has been explained away by Ayling, J., in *Rangiah v. Subramania*, 21 M. L. J. 21.

**(2) Where the suit is by a coparcener against a stranger.**—Where the suit is for partition and for recovery of possession, it is clearly a suit for recovery of possession and chargeable under s. 7 (v).

**(3) Where the plaintiff is in possession actual or constructive of the property along with the defendants.**—In such a suit the value should be under cl. (iv) (b) and *ad valorem* fee is leviable according to the prevailing view in Madras. In Bombay it is doubtful whether the decision of *Dagdu v. Totaram*, 33 B. 658, applies also to cases where the plaintiff is in possession. For reasons already stated it is presumed that the view of Bombay is also the same as that of Madras. If not, the Bombay view is to the effect that s. 7 (v) applies. All the other High Courts take the view that Art. 17 (vi) Schedule II alone applies and a fixed fee is leviable. See *In the matter of Nandalal Mukerjee*, 35 C. W. N. 942. But in the case of PATNA, see *Sitbaran Jha v. Loknath Missir*, 3 Pat. 618 *infra*.

and offences which in each province were vested in an officer appointed by the Governor-General in Council, under the style of the Attorney-General of the Province, who was also to discharge such other duties as might be assigned to him by the Governor-General in Council. The Solicitor-General for the Eastern Districts of the Cape continues to exercise the powers vested in him at the establishment of the Union ; the Crown Prosecutor of Griqualand West, however, lost office under Act No. 27 of 1912.

The Constitution conferred upon the advocates and attorneys entitled to practise before any provincial division the right to appear before the Appellate Division, but did nothing to amalgamate the profession in the Union. Nor has legislation for this purpose since been enacted, though by Act No. 7 of 1923 women were admitted to all the divisions on the same conditions as men.

#### § 6. *The Civil Service*

The Act of 1909 provided fully for the reorganization of the Civil Service. It took the somewhat unusual course, appropriate, however, to a unitary constitution as compared with those of Canada and Australia, of transferring the officers to the public service of the Union. The Governor-General in Council was required to appoint a Commission, which was duly formed in 1910, to advise as to the reorganization and readjustment of the service, and the transfer of officers to the provinces. On their recommendation the Government was authorized to make the transfers, and in the meantime to lend the necessary officers to the administrations. It was also provided that a Commission must be established on a permanent basis to deal with the appointment, discipline, retirement, and superannuation of officers. Officers for whose services no use could be found were to be entitled to retire with compensation on abolition of office, according to the rule in force in the Colony in which they had been employed ; other officers taken over were allowed to retire at the age and on the pension appropriate under colonial law. Special provision was to be made for the permanent officers of the old Parliaments whose services were not required by the Union Parliament. The officers of the Railway and Harbour Board were, however, exempted from the general provisions of



were in part a continuation of the Railway Board of the Central South African Railways, partly an imitation of the Commissioners who managed the railways in Australia, partly an amalgamation with the system of governmentally owned ports in the Cape and Natal.<sup>1</sup> The aim of the special board was intended to secure that the railways and ports should be run on economic principles as compared with the use of public revenue to make good deficiencies. But characteristically there was no deviation from the doctrine of ministerial responsibility. The Constitution provided for the control of the railways, ports, and harbours being exercised through a Board of three Commissioners or less, appointed by the Governor-General in Council, and a Minister of State who was to be Chairman. In 1916 the purpose of the Constitution was more precisely defined to mean that they should be administered and worked under the control and authority of the Governor-General in Council, to be exercised through a Minister of State, who shall be advised by the Board. The management and working of the railways and harbours shall, subject to the control of the Minister, be carried out by the General Manager, who shall be governed by such regulations as the Minister may from time to time frame after consultation with the Board. The Board, on this definition, becomes an advisory body, consulted by the Minister on matters of high policy, which does not claim the right to direct technical operations. The railways, ports, and harbours are to be administered, as has been mentioned, on business principles, but also with a view to promote industrial and agricultural settlement, which are hardly consistent objects, and the employment of white unskilled labour has been declared by the Controller and Auditor-General to be contrary to the constitutional requirement of business management. No new railway, port, or harbour can be constructed until the project has been reported on by the Board, and, if the Board holds that the returns will not meet working expenses, maintenance and interest on capital borrowed for the work, it may frame an estimate, which when

<sup>1</sup> Under Act No. 20 of 1922 the railways and harbours in South-West Africa became an integral part of the Union system and are controlled by a Divisional Superintendent at Windhoek, directly responsible to the General Manager. For the pre-Union system, see *The Government of South Africa*, i. 198 f.; ii. 131 ff., 138-47 (as to the funds in pre-Union times).

mode of possession is asked for, or whether in reality the relief of ejectment is claimed. *Bhagwan Appa v. Shivalla*, 101 I. C. 770 = 1927 Nag. 248.

**(8) Declaration regarding impartibility of property.—**

Where in a partition suit, property alleged to be wakf property and hence impartible, having been declared partible by the preliminary decree, it amounts to a declaration and an appeal against that decision need not bear an *ad valorem* stamp as there is no decree for possession. *Rekhi Kashi v. Mela Ram*, 1931 Lah. 170.

**Joint property and joint family property.**—Joint family or coparcenary property is that in which every coparcener has a joint possession. The conception of joint family property is one peculiar to Hindu Law. It is not the same as the joint property of the English Law, Strangers could be joint tenants but they could not hold property as a joint Hindu Family. *Karsands v. Ganga Bai*, 10 Bom. L. R. 184. Clause iv (b) applies only to cases where the subject-matter of the suit is joint family property. Where the property is merely common property but not joint family property, this clause is inapplicable. The relevant provision is Art. 17 (vi) of Schedule II. See now Bengal Amendment Act noticed *supra*.

**Co-tenants.**—A suit for partition of immoveable property by a person who alleges he is in possession of it as co-tenant on behalf of himself and others is governed by Art. 17 (vi) of Schedule II of the Act. "There is a long course of decisions in Calcutta that a suit for a partition by a plaintiff alleging himself to be already in joint possession is incapable of valuation within the meaning of Sch. II, Art. 17 (vi) and is not governed by paragraph (v) of s. 7 and though the point was not expressly decided by the Full Bench in *Rangiah Chetti v. Subramania Chetti*, 21 M. L. J. 21, the reasoning of all the learned judges who heard the reference is in accordance with this view. The same view was taken in *Tara Chand v. Afzal Beg*, 34 A. 184. In these circumstances, we are not prepared to agree with the decision in *Referred Case No. 5 of 1884*, 4 M. L. J. 110, that the value of the subject-matter of such a suit is not incapable of valuation but easily ascertainable; or with *Dagdu v. Totaram*, 33 B. 658, assuming that the point arose in that case which is not clear. The balance of authority appears to us to be strongly in favour of the view that such a suit as the present is governed by Schedule II Art. 17 (vi), the latest case being *Ahamuddin Tamijuddin v. Aminuddin*, 44 I. C. 216." *Gill v. Varadaragavayya*, 43 M. 396. See also *Mashkurunnisa v. Hashmatulla*, 20 I. C. 177.

**Suits between Muhammadan sharers.**—The properties inherited by Muhammadan sharers are not joint family properties and they hold the property as tenants in common. It has been held by the High Court of Madras in *Kurshit Kathum v. Hyder Khan*, 75 F. C. 93 = 1924 Mad. 207, that the proper Article applicable is Art. 17 (vi) of Schedule II. But it was held in *Abdul Kadir v. Bapubai*,

is true that occasionally in the case of federations<sup>1</sup> it has been contended that old treaties are abrogated if they are inconsistent with federation, but this doctrine, which may apply to sovereign states, clearly lacked force when applied to mere changes in territorial groups in the Empire, and the contentions at one time advanced in this sense on the Commonwealth of Australia were never taken seriously by the Imperial Government, and the Commonwealth itself rapidly recognized that the position was untenable. The obligation, of course, applies merely to the extent that it formerly applied; it is not by the Act extended to the whole of the Union; to do so would require a fresh international agreement. Difficulties, indeed, might have arisen in view of the fact that by international law various Imperial treaties applied to the conquered colonies before union, but the point did not arise in practice. In Canada s. 132 merely gave power to the Parliament to legislate, without enunciating the truism that the agreements of pre-federation time were binding on the Dominion, and it was never contended that the Anglo-Belgian treaty of 1862 or the convention with the North German Confederation of 1865, which compelled the colonies to treat these powers as favourably as the United Kingdom, were not binding on the Dominion.<sup>2</sup> No special power to legislate, of course, was requisite in the case of the Union, which, unlike Canada and Australia, has the position of a unitary power in regard to Labour conventions agreed to under the procedure of the League of Nations Labour clauses.

S. 138 of the Act went beyond Canadian<sup>3</sup> or Commonwealth<sup>4</sup> precedent in giving persons naturalized under the law of any colony the status of a naturalized person throughout the Union. The propriety of the rule was evident, and in the other two Dominions the result was brought about by legislation under their powers of enactment. The original draft was intended to limit the operation of the new rule to Europeans, but happily the fundamental absurdity of having a Union in which

<sup>1</sup> Commonwealth Government in *Parl. Pap.*, Cd. 3826, p. 6; Cd. 4355, p. 12.

<sup>2</sup> *Parl. Pap.*, C. 7553, pp. 53 ff.; Cd. 1630.

<sup>3</sup> 30 Vict. c. 3, s. 91 (25).

<sup>4</sup> Const. s. 51 (xix), carried out by *Naturalization Act*, 1903. For the Union, see Act No. 4 of 1910. A *British Nationality in the Union and Naturalization and Status of Aliens Act*, 1926, follows the principles of the Imperial Acts, 1918-22.

**Madras amendment.**—The clause has been amended by the Madras Court-Fees Act which adds a proviso to the effect that where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (v) of this section. For further commentaries see below.

**Declaratory decree.**—It may be a decree of a pure and simple declaration or it may be granted in conjunction with any other relief. In cases where a simple declaration is sought the fee is a fixed one and is provided for in Schedule II Article 17 (iii). It is Rs. 10 but the amount is increased in the various Provinces by the several Amending Acts. *Vide* commentaries under Art. 17 Schedule II. In cases where the relief prayed for is not a mere declaration but it is combined with any other consequential relief, then the present clause (iv) (c) applies.

**Section 42 of the Specific Relief Act.**—The Section runs as follows; “Any person entitled to any legal character, or to any right to any property, may institute a suit against any person denying, or intending to deny his title to such character or right and the court *may in its discretion* make therein a declaration that he is so entitled, and the *plaintiff need not in such suit ask for any further relief; provided that no court shall make such a declaration when the plaintiff being able to seek further relief than a mere declaration of title omits to do so.*”

It follows from the above that the right to get a declaratory decree is dependent on the discretion of the court, that a declaratory decree confers no new right or status but simply declares the existence of such a right and that a court shall not grant such a declaration where the plaintiff being in a position to pray for further relief omits to seek such a relief. “Further the section does not sanction every form of declaration, but only a declaration that the plaintiff is entitled to any legal character or to any right to any property; it is the disregard of this that accounts for the multifarious and at times eccentric declarations which find a place in Indian plaints” (per Jenkins, C. J., in *Mt. Deokali Koer v. Kedar Nath*, 39 C: 704 = 15 I. C. 427.)

**Is section 42 exhaustive?**—After the passing of the Specific Relief Act, the powers of courts to make a decree merely declaratory rests entirely on s. 42 of the Act. “It is in this section apart from any particular legislative sanction that the law as to merely declaratory decrees is now to be found”. (*Deokali v. Kedarnath*, 39 C. 704). “The Court’s power to make a declaration without more is derived from s. 42 of the Specific Relief Act and regard must be had to its precise terms.” *Sheoprasan Singh v. Ramanada Singh*, 43 C. 694 = 33 I. C. 914 = 3 L. W. 544. “It is now well settled that the power of courts in India to entertain suits of a civil nature does not carry with it the general power of making declarations except in so far as such power is expressly covered by statute.” *Muhammad Fahimal Haq v. Jagal Ballov*, 2 Pat. 391 = 74 I. C. 403 = 1923 Pat. 475. “It has been

be accustomed to learn through the medium of the other. After the fourth standard both languages were to be used, unless the parent preferred that one only should be employed, and, if there were enough pupils, there must be arrangements for separate classes for instruction. Moreover, the teaching of the non-home language was to be regular unless parents objected. Teachers were in future to be expected to pass the highest examination in both languages with a higher standard on one, though no existing teachers, otherwise competent, were to lose office or be otherwise penalized, if efficient, by reason of lack of knowledge of one or other language. The effort thus was to begin to make the country bilingual, without regard to the unsatisfactory effects of an education which for the Boer children meant acquiring through the medium of one or other of two really strange languages. Fortunately the absurdity was early recognized, and from 1914 the Provincial Councils approved the use of Afrikaans<sup>1</sup> in the elementary schools as an alternative, with the result that by 1925 it could be asserted that Afrikaans was in regular use through the elementary schools, and Netherlands was employed only in certain secondary classes. Parliament in 1918 accepted by resolution the view that Afrikaans was included in Dutch, but did not extend this generosity to Bills, Acts, and official papers, though, when *Hansard* was re-issued, speeches used to be recorded in Afrikaans. The Universities also allowed questions to be answered in Afrikaans, and from 1910 in Holland the language was admitted for use by Dutch-speaking South African students. When, however, the proposal to use the same language in Acts, &c., was brought up in 1925 a good deal of opposition showed itself, stress being laid on the fact that the Courts used Netherlands, and that it would be very inconvenient to seek to amend in Afrikaans Acts passed in Netherlands. Moreover, it was contended that the proper mode of procedure ought to be by constitutional change, Dutch in the Act of 1909 having manifestly the sense of Netherlands. On the other hand, an effort was made to establish that the term in the Act of 1909 was deliberately vague, and covered all dialects of Dutch or perhaps, indeed, indicated merely the two forms of Dutch current in South Africa, the Taal and the Church Dutch of the Bible and higher education. It was interesting to

<sup>1</sup> Cape Ordinance No. 14 of 1918 ; No. 25 of 1919, &c.

asserted. *Narendra v. Ram Singh*, 5 O. L. J. 133=45 I. C. 859; *Erjan Mondal v. Samiruddi*, 15 I. C. 552. See also *Fakir Chand v. Anandachar*, 14 C. 586. "The expression 'further relief' does not mean 'other relief' \* \* It must consequently be relief appropriate to and necessarily consequent on the right or title asserted. *Joynarain v. Srikanta*, 26 C. W. N. 211; *Sivaramalinga v. Subharatna*, 36 M. L. J. 624. The expression would not apply to any auxiliary, equitable relief which it is in the option of the plaintiff to claim or not. *Kannan v. Krishnan*, 13 M. 324. The further relief which the plaintiff is bound to claim is such relief as he would be in a position to claim from the defendant in an ordinary suit by virtue of the title which he seeks to establish and of which he prays for a declaration. *Abdul Kadir v. Muhammad*, 15 M. 18; *Fakir v. Ananda*, 14 C. 586; *Aisa v. Bidhu*, 17 C. L. J. 30=18 I. C. 633. 'Further relief' means additional relief and not an alternative relief. *Brokles v. Snell*, 38 I. C. 123 (P. C.). Where in a suit for declaration that the plaintiff was the owner of a certain property, the plaint was subsequently amended by adding another prayer for another declaration about the invalidity of a decree, the new relief is not consequential relief within the meaning of the clause but is chargeable to a further fee of Rs. 10 under Art. 17 of Sch. II. *Lakshmi Narain Rai v. Dip Narain Rai*, 55 All. 274=1933 A. L. J. 311=1933 All. 350.

**Where prayer for consequential relief necessary.**—The plaintiff cannot be compelled to ask for any relief merely because the same could be granted to him nor could he be debarred from obtaining the relief he prays for merely because he does not seek for other reliefs which he may not want. *Ram Kamal v. Syam Sundar*, 75 I. C. 41; *Ram Sundar v. Mathra Mohan*, 80 I. C. 2. It depends on the facts of each case whether it is incumbent on the plaintiff to seek for a consequential relief. *Umaranessa Bibi v. Januranessa*, 37 C. L. J. 499. A suit for a declaratory decree ought not to be dismissed as barred for want of a prayer for a consequential relief unless it is quite clear that the plaintiff ought to seek further relief which he has failed to claim, although such relief flows directly and necessarily from the declaration sought for. *Aisa Siddika v. Bidhu*, 17 C. L. J. 30. Where the plaintiff has framed his suit for a simple declaration when he ought to have asked for a consequential relief also, it is not the province of the court to insist on his amending the plaint by adding a prayer for consequential relief and paying court-fees thereon. It is for the plaintiff to choose. If he goes to trial with a sole prayer for declaration, he runs the risk of dismissal of his suit. *Tikat Thakur v. Nawab Saiyid*, 2 Pat. 915=80 I. C. 544=1925 Pat. 210. See also *Brij Gopal v. Suraj Karan*, 1932 A. L. J. 466=1932 All. 560; *Mahomed Ismail v. Liyaquat Husain*, 140 I. C. 191=1932 A. L. J. 165=1932 All. 316. When considering the question of court fee, the Court is not concerned with the question as to what reliefs should have been prayed for by the plaintiff. The question must be

Union, and freedom of trade. Rhodesia would receive a special extra subsidy of £50,000 for ten years, and £500,000 at least for ten years for capital expenditure, including land settlement, which would be controlled by a Board of Rhodesians, the Union freeing the land from all claims of the British South Africa Company, and acquiring its railway rights, as well as paying its mineral royalties pending their acquisition by the Government. No recruiting of natives from Rhodesia was to be permitted. English and Dutch were to be placed on a footing of equality. The terms were criticized largely because of the feeling that by the last provision Rhodesia would be brought definitely under Dutch influence, and its lands would really serve, as they were desired to serve, to provide the Union with means of settling Dutch farmers and altering the predominantly British character of the country. Further, doubt was felt as to the security of the provincial status, there being no obvious guarantee of its power to endure.<sup>1</sup> In this case the lack of federal character of the Constitution was probably a direct incentive to avoid merger in the Union, and the vote for responsible government in lieu was unexpectedly decisive, and would probably have been more so, had it not been for the greater financial ease which was suggested by the offers of the Union.

S. 151 provides for the transfer to the Union of the government of any territories, other than those of the British South Africa Company, either of or under the protection of the Crown, inhabited solely or in part by natives, on addresses from both the Houses of Parliament.<sup>2</sup> On such transfer being made, the Governor-General in Council may undertake the government of the territories on the terms laid down in a schedule to the South Africa Act. The schedule represents the views of the Imperial Government on the due handling of issues affecting the natives of the protectorates and the Colony of Basutoland under direct Crown control, and it is on the whole probable that the experiment of providing for them in this manner was a wise one, since otherwise it might have been more difficult to

<sup>1</sup> The difficulty pointed out in ed. 1, ii. 978, was accepted by Nathan, *South African Commonwealth*, p. 125.

<sup>2</sup> Mr. Keir Hardie vainly suggested that the assent of the territory was requisite; see *House of Lords Debates*, ii. 867-70; *Commons Debates*, ix. 1643 f. See Walker, *Lord de Villiers*, pp. 446 ff.

declaration with consequential relief. *Gangadhar v. Ram Debandrabala*, 5 P. 211; *Krishnadas v. Haricharan*, 14 C. L. J. 47; *Deo Kali v. Kadernath*, 39 C. 704; *Hukam Singh v. Musst. Gyan Devi*, 36 I. C. 95=87 P. R. 1916; *Nga Chit v. Wat Kwanan*, 33 I. C. 624; *Babu Ras v. Balaji*, 1929 Nag. 71.

### B—Specific Instances.

**1. Suit for accounts.**—A suit for a declaration that the defendant is liable to render accounts does not cease to be a suit for simple declaration merely because there is coupled with it a prayer that the plaintiff may be permitted to inspect the books of account; but it would be otherwise if there be a prayer for injunction regarding the account books or property in the hands of the defendants. *Manohar Ganesh v. Bawa Ram*, 2 B. 210; *Raghunath v. Gangadhar*, 10 B. 60.

**2. Confirmation of possession.**—A prayer for confirmation of possession is a consequential relief. Where a plaintiff asserting to be in possession sought to establish a will by setting aside an adverse summary order, it was held that the suit was one for declaration with consequential relief. *Dinabandhu v. Rajamohini*, 16 W. R. 213; *Rajabala v. Radhika*, 1924 Cal. 969. A prayer for confirmation of possession is nothing more than a prayer for possession. The proper value to be placed on the relief is the value of the property. *Mahabir La v. Dulhin Rajan Kuer*, 1935 Pat. 191.

**3. Injunction.**—An injunction is a consequential relief and when a declaration and injunction are prayed for, the court-fee in Schedule II of Article 17 (iii) is not sufficient. *Deokali Koer v. Babu Kader*, 39 C. 704; *King Behari v. Keshav Lal*, 28 B. 567; a prayer for permanent injunction is a prayer for a consequential relief. *Hari Sankar v. Kali Kumar*, 32 C. 734=9 C. W. N. 690; *Rai Charam v. Kunj Behari*, 46 I. C. 884; *Rajabala v. Radhika*, 1924 Cal. 969; *Rahim Bai v. Mariam*, 34 B. 267; *Vaiyapuri v. Ramachandra*, 21 L. W. 679=89 I. C. 930=1925 Mad. 1143; *Abdul v. Muhammad*, 15 M. 15; *Srinivasa v. Srinivasa*, 16 M. 31; *Velu Gounden v. Kumaravelu*, 20 M. 282; *Vachami v. Vachami*, 33 B. 307; *Jagesh Rao v. Durga Prasad*, 13 I. C. 408; *Gangadhar Misra v. Rami Debendrabala*, 5 Pat. 211=94 I. C. 22=1926 Pat. 249; *Jhanda Singh v. Gulab Mal Bhagwan Doss*, 137 I. C. 240=33 P. L. R. 488. If the prayer is only for a mere injunction, clause (iv) (d) is applicable. Where a plaintiff is out of possession of property, he cannot sue for declaration and injunction. *Rathna Sabapathi v. Ramaswami*, 33 M. 452=5 I. C. 630=20 M. L. J. 301. See also *Deiva Sikamani v. Subbiah*, 4 I. C. 1131. In a suit for declaration of title to land a prayer for injunction against the defendant is a prayer for a consequential relief as much as a prayer for confirmation of possession. *Dinanath v. Ramnath*, 23 C. L. J. 561=34 I. C. 702. Where the property was in the possession of the Collector, the prayer for injunction against the defendant was held unnecessary and a simple prayer for declaration was held sufficient. *Rachappa*



enjoy just treatment, while in Basutoland the regulation of the old institution of the Pitso or national gathering has developed native self-government in what is essentially a vast native reserve.

The office of High Commissioner is held together with that of Governor-General of the Union, but, as High Commissioner, the officer in question is in no wise subject to ministerial control, though the union of the offices in the same hands is deemed a prudent means of securing that the Governments of the territories shall be in cordial relations with the Union Government. Occasionally, as when Southern Rhodesia was still under the control of the High Commissioner, supervising the administration of the Company, incidents occurred which excited comment in the Union on the more just and prudent exercise of the prerogative of mercy by the High Commissioner. The High Commissioner still retains considerable powers as regards native administration in Southern Rhodesia.

#### § 10. *The Amendment of the Constitution*

The power of change included in the Constitution is very wide indeed. It is true that it must be exercised within the limitation for which the Union was created, namely the creation of a legislative union under the Crown, but, as the Constitution is unitary, the right to change is as full as in Newfoundland, and perhaps more so than in New Zealand. This, of course, was in keeping with colonial practice; the Constitutions of the Cape and Natal allowed of unfettered change, those of the Transvaal and the Orange River Colony required reservation only as a precaution, and, though the creation of the provincial system might have been expected to result in demands for greater precision, the determination of the majority of the Delegates to the Convention to secure union led to the refusal to stereotype. S. 152 gives to Parliament the power to repeal or alter any provision for the Act; it imposed only a disability—now spent—on provisions for whose duration, as in the case of the composition of the Senate, a definite time limit was fixed. But changes in the section itself; in ss. 33 and 34 relative to the number of members of the Assembly until the number of members reaches 150; in s. 35 regarding the qualifications of electors of members

*Chand v. Annund*, 14 Cal. 586. But see *Kombi v. Anndi*, 13 Mad. 75. See commentary under para (1) *supra*.

**Assessment of rent.**—A suit for declaration and possession or in the alternative for assessment of a fair and equitable rent, is a suit for declaration with consequential relief and falls under clause (iv) (c). *Dhamukhdhari v. Mani*, 6 Pat. 17=100 I. C. 913=1927 Pat. 123. A suit for a declaration that the plaintiff is an occupancy raiyat and for settling a fair and equitable rent was held to be a suit for a declaratory decree with consequential relief. *Pajruddin v. Secretary of State*, 17 I. C. 919; *Trailokiya v. Secretary of State*, 18 I. C. 188.

**5. Pre-emption.**—A suit for pre-emption cannot contain a bare declaration to pre-empt. The right of pre-emption cannot be enforced by a mere declaratory decree as the claim for declaration must be followed by further relief in order that the order shall be effectual. *Charandar v. Amirkhan*, 57 I. C. 606 P. C.=39 M. L. J. 195.

**6. Self-acquisitions.**—A suit for the mere declaration that suit properties are self-acquired may be instituted by the plaintiff without any consequential relief, *Chabildas v. Ramadas*, 11 Bom. L. R. 606=3 I. C. 257.

**7. Recovery of possession.**—A suit cannot lie for a mere declaration of title when the plaintiff is in a position to sue for possession. *Ganapatgir v. Ganapatgir*, 3 B. 230; *Narayana v. Sankummi*, 15 M. 255; *Srinivasa v. Srinivasa*, 16 M. 34. But in *Netiram v. Venkatacharlu*, 26 M. 450, it was held that a suit for a declaration that the defendants were not the lawful trustees and for the appointment of new trustees is not barred by reason of the fact that no consequential relief is claimed even if the defendants were in possession. A plaintiff out of possession cannot merely sue for injunction but must pray for possession. *Kunjbehari v. Keshavlal*, 28 B. 597. For a suit to be barred owing to the absence of a prayer for possession, it must be shown that the defendant was in possession and that against him the plaintiff could have obtained a decree for possession. *Malaiyya v. Perumal*, 36 M. 62. In *Vedanayaga v. Vedammal*, 27 M. 591, it was held that where the possession is not with the defendant but in *custodia legis*, the plaintiff is not bound to pray for possession. Where a magistrate attached the property under s. 146 of the Criminal Procedure Code, and appointed the collector as receiver, the plaintiff need confine his prayer only to declaration and need not seek any consequential relief of possession, *Administrator General of Bengal v. Bhagawanchara*, 10 I. C. 531. Possession of receiver is court's possession. No prayer for possession is necessary. *Chintamani v. Tarak*, 35 I. C. 17; *Devarajulu v. Kondammal*, 1925 Mad. 427. So also is the possession by the Court of Wards. *Jagannath Gir v. Trigumanand*, 37 A. 185=28 I. C. 139. In *Rathnasabapathi v. Ramaswami*, 33 M. 452, it was held that a plaintiff out of possession

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PART V

IMPERIAL CONTROL OVER DOMINION  
ADMINISTRATION AND  
LEGISLATION

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that an alienation by the widow is not binding on the reversioners cannot be regarded as a "consequential relief" within s. 7 (iv) (c) of the Court-Fees Act since both the reliefs are unconnected and independent of each other as the prayer for the appointment of a Receiver had no connection with the specific alienation sought to be set aside. The proper court-fee payable is for declaration under Schedule II Article 17 (A) and for receiver under Article 17 (B). *Karuppanna Thevar v. Angammal*, 96 I. C. 129=1926 Mad. 678=51 M. L. J. 67. But see *Krishna Row v. Chandrabagabai*, 79 I. C. 668=1924 Nag. 316, where the relief for the appointment of a Receiver was considered in the nature of consequential relief, as the relief was based on and connected with the relief of declaration. Where the plaintiff sues for a declaration that he is the next presumptive reversioner, that the alienations made by the widow are not binding on the reversioners and that a receiver may be appointed for the management of the property, it has been held that the prayer regarding the appointment of a receiver is a consequential relief and that *ad valorem* fee is payable on the value of property. *Chatarpali v. Kalap Dei*, 1931 A. L. J. 837.

**11. Suit by defeated claimant or decree-holder.**—Where a defeated claimant files a regular suit under O. XXI, R. 63 C. P. C. the suit falls under Sch. II, Art. 17, cl. 1. But where the judgment-debtor is also impleaded as a defendant and possession of the property is prayed for against him then the fee is leviable under para iv (c) of this section. *Chandradhan Singh v. Tipon Prosad*, 43 I. C. 971=3 Pat. L. J. 482. A suit by a decree-holder for a declaration to the effect that a gift deed and a sale deed executed by the judgment-debtor are fictitious and void, and the properties covered by them are capable of being attached in execution of his decree, is purely a declaratory suit without consequential relief as the prayer for declaration is implied in the prayer that the deeds shall be void. Hence no *ad valorem* fee is chargeable. *Ram Dayal v. Baldeo Prasad*, 1931 Oudh 72. Where plaintiff sues for declaration that his share in certain property is not liable to attachment and sale in execution of a decree against his father, the suit is one for a mere declaration without consequential relief and *ad valorem* court-fee need not be paid on the amount due under the decree. *Adeshwar Prasad v. Badami Devi*, 148 I. C. 908=1934 Oudh 212.

**12. Suit by landlord.**—A suit by a landlord for declaration of title and possession or for assessment of rent is held to be a suit for declaration with consequential relief. *Dhanukdhari v. Mani*, 6 Pat. 17=100 I. C. 913=1927 Pat. 123. For a converse case of a suit by a tenant see *Ram Ekbal v. Baldeo Singh*, 25 I. C. 507. A suit for a declaration that certain leases in respect of debutter property were illegal and invalid and for possession of the property covered by the leases is governed by s. 7 (iv) (c) and must be valued at the valuation of the lease-hold interests created by the leases in question and not the value of the properties themselves, and the

## THE PRINCIPLES OF IMPERIAL CONTROL

§ 1. *Control over Dominion Administration*

THE control which the Imperial Government can exercise over the administrative actions of a Dominion Government is small and indirect. In the main it is clear that action in a Dominion can be taken only by a Ministry with the powers of executive action which it possesses, and that, if a Governor cannot find ministers willing to act in the sense desired by the Imperial Government, he is unable to effect their wishes. There are exceptions to this general position. A Governor might grant a pardon in defiance of ministers' advice, or refuse to grant it; he might decline to sign a land grant, where it is the custom to obtain his signature; thus in Newfoundland, as long as the French treaty rights prevented settlement being uninterrupted in the coastal area, the Governor was forbidden to sign any grant which did not contain definite reservations of French treaty rights. Or the Governor may refuse to sign a warrant for the issue of money, if there is no legal sanction for it, and in 1878 Sir M. Hicks-Beach was prepared to rule that a Governor's duty might lead him to refuse, but in 1910 the Secretary of State<sup>1</sup> did not intervene to prevent the acting Governor of the Transvaal signing the warrant which authorized the issue to members of the Legislature of a salary which they had not earned, and which would not have been approved by the Legislative Council, had that body been asked to sanction it by Act of Parliament. Or the Governor may refuse his assent to regulations to be passed in Council,<sup>2</sup> and this power has been used from time to time as a means of delaying action until the Imperial Government has discussed the proposed regulations with the local Government. Or where native chiefs are concerned a Governor may decline to approve deportation or re-

<sup>1</sup> Cf. *House of Lords Debates*, vi. 401 ff.

<sup>2</sup> Cf. Lord Minto's refusal to sign the minute dismissing Lord Dundonald from the office of G.O.C., Canada, without full consideration; Skelton, *Sir Wilfrid Laurier*, ii. 200 f.

9 I. C. 673. But if a consequential relief as a direction to the defendant to execute a conveyance is also prayed for, then para iv (c) applies. *Dada v. Nagesh*, 23 B. 486.

**17. Compensation money.**—Suit for declaration that certain moneys deposited as compensation under the Land Acquisition Act belongs to the plaintiff is one for simple declaration with no consequential relief as the Collector who held the amount is bound to pay the same to any person who is declared by the court to be legally entitled to same. *Somu v. Vemer*, 14 M. 46.

**18. Wrong demarcation by Survey Officer.**—Suit for declaration of title to certain lands in the possession of plaintiff on the allegation that the same has been wrongfully excluded by the survey officer in demarcating his lands, is virtually a suit for possession of land. *Chockalinga v. Achiyar*, 1 M. 40.

**19. Waste by Hindu widow.**—A suit by a Hindu reversioner for a declaration that certain specified transactions by a Hindu widow amounted to waste and for an injunction restraining her from wasting the estate, was held to fall within para iv (c). *Kandhaiya v. Jagrani Kuar*, 79 I. C. 358.

**20. Suit by adopted son.**—Where the plaintiff's status as an adopted son is challenged and the suit is filed for a declaration as to his status and for recovery of possession it was held to fall under para iv (c). *Uguramohan v. Lachmi*, 1923 Pat. 100.

**21. Record of rights.**—See s. 111-A of the Bengal Tenancy Act, where it is provided that any person dissatisfied with an entry in the Record of Rights and which concerns a right of *which he is in possession* may file a suit for declaration of his rights. But where the relief is for a correction of an entry regarding his status, *ad valorem* fee is payable. *Midnapur Zemindari Co. v. Secretary of State*, 44 Cal. 352=40 I. C. 96.

**22. Suit by next friend of lunatic.**—Where the wife of a lunatic sued as manager of her husband's property for a declaration that a deed of gift executed by the lunatic, in favour of the defendant, was null and void, and for the recovery of the property conveyed by the deed, it was held as follows "The question to be decided is whether the suit is one for a declaration with consequential relief on which court-fee is payable under para iv (c) or whether it can be treated as a suit for possession under para (v). The suit as framed is clearly one for a declaration with consequential relief. It is therefore beside the mark to suggest that the suit might have been framed so as to ask for different reliefs, or in other words, that it might have been framed purely as a suit for possession." *Ganga Dei v. Shekhdeo Parshad*, 47 A. 78.

**23. Suit for declaration about cheque.**—Where there was a prayer for payment of money due under a cheque or for a

now be deemed incompatible with the respect due to them. But the case was more pronounced in the Maritime Provinces, for there there was real reluctance to federate, which did not exist in Canada. The Lieutenant-Governor of Nova Scotia was fortunate in having a Ministry <sup>1</sup> which accepted federation, and he supported it in its refusal to allow the people a voice in their destiny. In New Brunswick the Ministry in 1866 was definitely hostile, while the Lieutenant-Governor was equally definitely under instructions to use his best efforts to further federation. When, therefore, the Legislative Council, a nominee body of no great status, addressed him in favour of federation, he replied concurring in the policy, though he was manifestly under obligation to consult his ministers before taking any action. They, however, were foolish enough to resign on 13 April, opening the way to a dissolution and a fresh Ministry which accepted federation. The tactics of the outgoing ministers was deplorable, but the provocation, if not deliberate, was great.<sup>2</sup> On the other hand, Lord Carnarvon failed to induce the Governor of the Cape to follow this model in 1875. The Legislative Council of the Cape favoured federation; so perhaps did the people, but the Assembly was adamant. Lord Carnarvon conceived the idea on 22 October 1875<sup>3</sup> of suggesting that the Governor should dismiss the Lower House, thus achieving harmony perhaps with the Upper and the Secretary of State. It turned out, however, that the Governor<sup>4</sup> strongly dissuaded the step as 'an attempt to turn out a Ministry supported by a large and increasing majority for the purpose of dissolving Parliament on a question of Imperial policy'. He recognized clearly that to dissolve he must substitute a new Ministry for that which he had, and he was dubious as to the result of an appeal, which would have been prejudiced in any case by the fact of his intervention, even assuming that he could have found a Ministry to dissolve. Lord Carnarvon, it is fair to say, took up the view that he assumed that the Ministry would wish to advise a dissolution in the circumstances of the case, though it must be confessed that he had not a vestige of ground for such a suggestion.

<sup>1</sup> Skelton, *Sir Wilfrid Laurier*, i. 472; Pope, i. 358 f.

<sup>2</sup> Pope, *op. cit.*, i. 296 f.; Hannay, *New Brunswick*, ii. 248.

<sup>3</sup> *Parl. Pap.*, C. 1399, p. 27.

<sup>4</sup> *Ibid.*, pp. 52 ff.; Molteno, *Sir John Molteno*, ii. 40 ff.

and cancellation is therefore a suit in which further relief is sought. Where a Pardanashin lady sought a declaration that a document purported to have been executed by her was not really executed by her and for cancellation thereof, the prayer for cancellation was held to be a substantial relief and the suit was one for a declaration with consequential relief. *Taccordeen v. Nawab Syed Ali*, 1 I. A. 192 = 21 W. R. 340 (P C.). Where the suit is for a declaration that a document does not affect plaintiff's title, it is one for declaration with consequential relief and court-fee is payable under s. 7 (iv) (c). The relief claimed is really the same whether the plaint purports to ask that a document should be adjudged voidable and declared not to affect the plaintiff's title or be set aside or cancelled. *Baburao v. Balaji Row*, 1929 Nag. 71; *Khirichand v. Meghini*, 5 Pat. 493 = 1926 Pat. 453 = 98 I. C. 432. But where the plaintiff is out of possession and is in a position to claim a decree for possession the court in exercise of its discretion may pass a decree for cancellation of the instrument according to which if genuine the plaintiff has no title to the property. *Sankarlal v. Samplal*, 34 A. 140 = 13 I. C. 19. An executant of a sale deed cannot obtain a declaration of his right to the property sold, unless and until he gets the sale deed set aside. *Pannabibi v. Habiba*, 6 I. C. 891.

**Conflict of decisions.**—There is a conflict of decisions between the several High Courts as to the effect of s. 39 of the Specific Relief Act. The decisions previous to the enactment of the Specific Relief Act—*Taccordin v. Ali Hussain*, 21 W. R. 340 and *Joy Narain v. Girish Chander*, 22 W. R. 438 = 15 B. L. R. 170—laid down that in suits to have a sale deed or a will declared a forged or fraudulent one, a prayer for a consequential relief of the cancellation of the instrument was necessary. But after s. 39 of the Specific Relief Act was enacted the question arose whether the prayer for a cancellation of the document was still necessary and whether a prayer for a simple declaration would not suffice. The view of the BOMBAY High Court is that a prayer for a bare declaration would be sufficient. *Srimant Sagaji Rao v. Smith*, 20 B. 736, while the High Courts of MADRAS, PATNA and LAHORE hold the contrary view. *Samia Mavali v. Minammal*, 23 M. 490; *Narayana v. Ayya Pattar*, 7 M. H. C. R. 372; *Parathayi v. Sankumani*, 15 M. 294; *Noowoogar v. Sridar*, 45 I. C. 238; *Hukkum Singh v. Gyan Devi*, 36 I. C. 95; *Namak Chand v. Jewan Mal*, 35 P. R. 1914. In ALLAHABAD the view is taken that a suit for the cancellation of the instrument falls under the residuary article Sch. I Art. 1. This overrules the earlier decision of that court in *Karam Khan v. Daryai Singh*, 5 All. 331. Their Lordships observe as follows:—"If a substantive relief is claimed though clothed in the garb of declaratory decree with a consequential relief, the court is entitled to see what is the real nature of the relief and if it is satisfied that it is not a mere consequential relief but a substantial relief, it can demand the proper court-fee on that relief irrespective of the arbitrary valuation



completed Act duly assented to. Of these three the first method is now almost, if not quite, obsolete.

When a Bill has passed the two Houses, it ought forthwith to be presented for the royal assent to the Governor, and no delay in such presentation is legitimate, though in Western Australia Act No. 30 of 1902 was in point of fact long held back before presentation to the Governor. It has been doubted whether a Governor should ever refuse assent, and for this may be quoted the British practice as laid down by Mr. Asquith on 2 March 1911 when speaking on the Parliament Bill. But the statement of views there was in any case too strong, because it ignored the possibility of the Government of the day advising the Crown not to assent to a Bill which had passed by some accident through the two Houses in an unsatisfactory form.<sup>1</sup> The threat of refusal of assent was used in 1858 to secure the agreement of promoters to certain changes in the Victoria Station and Pimlico Railway Bill desired by the Government, and there seems nothing in the nature of things why it should not be used again in a similar case of a private Bill, which is not a Government measure. It is, of course, a different thing in the case of a measure actually brought forward by the Government; to advise the withholding of assent would be a very strong step, and, though the Crown might well act on such advice, there is the chance that the issue would approach so closely to the point of a violation of the Constitution as to render the giving of such advice most improper. In the Dominions the power to advise refusal of assent no doubt equally exists, but it has been very little used. In 1877<sup>2</sup> the Governor of New Zealand was urged by his Ministry not to assent to the Land Bill passed in the last session of Parliament, on the score that it had been introduced by the late Government, and, though taken up by the Ministry as finally passed, it contained provisions to which the Ministry was opposed. Lord Normanby declined to accept the advice given, on the score that ministers ought to have used their influence to secure the passage of the Bill in the form they desired, and his action was approved by the Secretary of State on 15 February 1878. But the position adopted was hardly

<sup>1</sup> Todd, *Parl. Govt.*, ii. 398; Lowell, *Government of England*, i. 26; *Hansard*, ser. 3, cli. 586 ff., 691 ff., 797 f.

<sup>2</sup> *Gazette*, 1878, p. 912; *Parl. Pap.*, 1878, A. 2, p. 14.

all excepting one were parties to a sale deed which was sought to be declared to be invalid. It was held that so far as those plaintiffs who were parties to the deed were concerned, if a declaration were given the result would be the same as if that deed were cancelled and that therefore *ad valorem* stamp fee must be paid by them. See also *Kalavia v. Secretary of State*, 29 B. 19 and *Harihar v. Shyamlal*, 40 C. 615. In *Chinnammal v. Madarasa Rowther*, 27 M. 480, which was a suit for cancellation of and delivery of a mortgage for Rs. 4,000 and was valued at Rs. 50 by the plaintiff the court held that the plaintiff's valuation should be accepted as the suit fell under clause iv (c). The question was considered by a Full Bench of the High Court of Madras in *Arunachallam v. Rangaswami*, 38 M. 922. The whole case law on the point was reviewed and their Lordships laid down the law as follows :

"In *Achammal v. Achammal*, 20 M. L. J. 791, it was held that though only a declaration was asked for, the suit was one for cancellation and that clause iv (c) applied. The statement in the judgment that an *ad valorem* fee was payable does not mean that clause iv (c) was not applicable because the fee payable in suits falling under this clause is *ad valorem*, though under the provisions of the section it is computed according to the amount at which the relief sought is valued in the plaint. The decision in *Harihar Prasad Singh v. Shyam Lal*, 40 C. 615 is to the same effect. Following these authorities we are of opinion that a suit of the nature indicated in the reference which merely asks for a declaration is none the less a suit for a declaratory decree with consequential relief within the meaning of clause iv (c)". Thus it was held that a suit for a declaration that a mortgage decree is not binding on the plaintiff and for an injunction restraining the defendant from executing the same, is a suit for a declaratory decree with consequential relief within the meaning of s. 7 clause iv (c) of the Court-Fees Act and *ad valorem*, fee is payable on the valuation fixed in the plaint. "Where a party executes a document or a decree is passed against him, *prima facie* such a decree or deed is binding on him. Until it is set aside it cannot be treated as void. The decree therefore declaring that the deed or decree is not binding on the plaintiff has the effect of cancellation of the deed or decree. It is not a mere declaratory decree. The case might be different where a declaration is sought by a person who is not a party to the bond or the decree. In a case like that the suit may properly be regarded as one for declaration but in the other case it is more properly a suit to get rid of an already existing obligation." Where a plaintiff who is not a party to a deed wants a declaration that the deed is not binding on him or on the devaswom of which he is a trustee, the suit is one for declaration and not for cancellation. *Vellora Karuppan v. Kutty Nair*, 1924 Mad. 611 = 78 L. C. 118. See also the decision of the Oudh Court to the same effect in *Daya Shanker v. Mahomed Ibrahim Khan*, 141 I. C. 798 = 1933 Oudh 116. A suit by a member of a joint Hindu Family for

proper only on explicit instructions from the Dominion Government, and such withholding has been of late years very rare indeed. In the case of the provinces of South Africa the matter has been solved by giving the power of assent to the Governor-General in Council only.

There is much to be said for reservation, or its equivalent, a suspending clause, in preference to disallowance. Mr. Blake,<sup>1</sup> indeed, in his attack on the Canadian royal instructions, was strongly in favour of the rule that legislation should be completed in Canada by the assent of the Governor-General, leaving the Imperial Government to secure disallowance and eliminating the Governor-General as a factor in the dispute. His representations were accepted only to the extent that it was agreed to omit from the royal instructions any references to classes of Bills to be reserved by the Governor-General, but this, it was explained, was not to imply any abandonment of the right of reservation when deemed suitable, and as late as 1886 this form of intervention occurred. But the Canadian form of dealing with Bills which else might have to be reserved, is to insert a clause providing that they shall not come into effect unless brought into operation by proclamation, with the result that, if the Imperial Government dissents, no proclamation is issued. This happened as regards the Dominion *Copyright Act* of 1889, part XV on load-lines of the *Canada Shipping Act*, and c. 57 of the Acts of 1910 dealing with the control of cable rates, which was to be dependent on the passing of legislation by the Imperial Parliament to the same effect.

In the case of the Commonwealth the same rule of not laying down any detailed instructions was adopted, following the precedent of Canada since 1878, but, though the model of these two Dominions was applied to the case of New Zealand when that Dominion was formally given the style of Dominion of New Zealand in 1907, it was not adopted in 1909 on the creation of the Union of South Africa.<sup>2</sup> In the royal instructions in that case the Governor-General is forbidden to assent to any Bill which he has been specially instructed by the Secretary of State to reserve, and is directed to take special care not to assent to

<sup>1</sup> *Canada Sess. Pap.*, 1877, No. 13.

<sup>2</sup> *Commons Deb.*, ix. 1635 f. ; *Lords Deb.*, ii. 761, 863 f. ; 776 (Lord Curzon), 794 (Lord Lansdowne), 789 f. (Archbishop of Canterbury).

of property were not valid and binding as against their share and for partition and possession of their share in those and other plaint properties. The plaint properties were the joint properties of the plaintiffs and the 1st defendant who was the family manager. The alienations in question were made by the 1st defendant not only as manager but also as the guardian of the plaintiffs. It was held that the suit though in form one for a declaration, was really one for setting aside or for cancellation of the sale deed to which the plaintiffs were parties and which *prima facie*, bound them, and must be valued as such for purpose of court-fee and jurisdiction. It was further observed as follows "These alienations were made by the father of the plaintiffs not only as the manager of a joint Hindu family but also as their guardian. \* \* The minors are parties to these alienations which are *prima facie*, binding on them. The power of a Hindu father may be more or may be less than the power of a guardian to bind the minors, but unless it can be established that the alienations were for unnecessary or illegal purposes the alienations are *prima facie* good. *Subba Goundan v. Krishnamachari*, 45 M. 449. In *Uni v. Kuchiamma*, 14 M. 26, the document was not executed by the plaintiffs or by any person under whom they claimed. *Kamaraju v. Gunnaya*, 45 M.L.J. 240, was not a case of court-fee. \* \* \* *Achammal v. Achammal*, 20 M.L.J. 791, is a case very similar to the present, where all the plaintiffs but one were parties to the deed through their mother as guardian and it was held that a suit in which the plaintiffs ask for a declaration that a *Jenn sale* deed of the suit properties was not valid and binding on their tarwad must be treated as a suit for the cancellation of the deed and an *ad valorem* fee was requisite. Further, it was held that the application of any particular clause of s. 7 must depend on the substance of the claim and not on the mere words used in the plaint. In 1922 by Madras Act V of that year a further clause iv-A was added to s. 7 whereby in a suit for cancellation of a document securing property having a money value the amount or value of the property for which the document was executed is declared to be the amount on which *ad valorem* court-fee is to be paid. See also *Logan Bart Kuer v. Khakhan Sing*, 43 I. C. 962=3 P. L. J. 92. In *Arunachalam Chetty v. Rangaswami Pillai*, 38 Mad. 932 (F. B.), it was held that a suit for a declaration that a decree or a document is not binding is a suit under sub-clause 4 (c) and must be stamped *ad valorem*. The plaint must be construed as a plaint for cancellation or avoidance of these alienations to which the minors were parties and which *prima facie* bind them." *V. N. Alagar Aiyangar v. Srinivasa Aiyangar* 50 M. L. J. 406.

But see the later decision in *Veeraraghavalu v. Srinivasulu*, 1928 Mad. 816, where it was held that the minor need not set aside the sale deed and could sue for possession ignoring it altogether. This decision however, has been practically dissented from in a later case, *Doraiswami Reddiyar v. Thangavelu Mudaliar*, 1929 Mad. 668, where it was held that a suit for declaration that a release

in Our name to such Bill unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon Us by Treaty. But he is to transmit to Us, by the earliest opportunity, the Bill so assented to with his reasons for assenting thereto.

In the case of the Australian States the same general list is given, but nos. 4 and 6 disappear, as the question of customs and of defence are removed from State control, and no. 3 refers merely to currency, for the States cannot normally sanction the issue of paper currency. Moreover the proviso is prefaced by the further clause, ' Unless he shall previously have obtained Our instructions upon such Bill through one of Our Principal Secretaries of State, or '. In the case of Southern Rhodesia there is omitted no. 6 regarding interference with the Imperial forces, presumably because such forces are not in fact stationed in the Colony, and there has disappeared the authority to assent in case of urgent necessity, doubtless by reason of telegraphic facilities, and the fact that the alternatives of receiving prior instructions from the Secretary of State, or of the insertion of a suspending clause, are quite adequate. In the Maltese instructions the prohibition against interfering with Imperial matters is wider, and applies to ' any law which appears to him to relate to or anyway affect any reserved matter within the meaning of the Malta Constitution Letters Patent, 1921 ', while no reference is made to currency, which is not within the powers of the Legislature. In this case also urgency is not a ground for assent.

Of the old letters patent, now superseded by Union, those of the Cape agreed with the Newfoundland list, while in the case of Natal was added a clause (8), ' any Bill whereby persons not of European race or descent may be subjected or made liable to any disabilities or restrictions to which persons not of European birth or descent are not also subjected or made liable '. Urgency was permitted as a ground for assent, the proviso following the form of that in the case of the Australian States. In the Transvaal and the Orange River Colony the clause<sup>1</sup> regarding withholding assent from Bills differentially affecting non-Europeans was strengthened by being inserted in the letters patent constituting the Legislature, thus rendering any Bill violating the prohibition utterly null and void, whereas under

<sup>1</sup> Letters Patent, 6 Dec. 1906, s. 49; 5 June 1907, s. 51.

*Dei v. Sukhdeo Prasad*, 47 All. 78=1924 All. 612. Where the plaintiff asks for a declaration as his first relief and possession as a second relief, it must be taken that in the opinion of the plaintiff or at least his legal adviser the declaration is a necessary relief. *Tula Ram v. Dwarka Das*, 50 All. 610=1928 All. 248. Where the plaintiff alleged the defendant had vacated his office as a Mahant of a Math by marrying and that he had succeeded to that office by virtue of his being a chela of a former Mahant and was entitled to get possession of all the properties, and sued for declaration of his title and for possession of the properties of the Math, it was held that the plaintiff before he could get possession ought to obtain a declaration in his favour that the defendant had vacated the office of Mahant and that he had succeeded to that office and that it was a suit for declaration with consequential relief and not merely a suit for possession with incidental preliminary determination of title and therefore court-fee was payable under s. 7 cl. (iv) (c) and not under cl. (v). *Ram Bhusan Das v. Bachu Rai*, 152 I. C. 1003=1934 Pat. 641. The NAGPUR and RANGOON courts also seem to be of the same view. *Babuappa v. Ramchandra*, 1929 Nag. 276 and *Maung Shein v. Ma Lon Ton*, 9 Rang. 401. According to the Oudh Court, if the principal relief claimed is one for possession and the relief for declaration is merely ancillary to it, it is enough to pay court-fee on the relief for possession. On the other hand, if the principal relief is for declaration and the plaintiff's right to possession depends upon his being entitled to the declaration, then the relief for possession must be regarded as a consequential relief and the court-fee would be payable according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal. *Deoraj v. Kunj Bihari*, 5 Luck. 474=124 I. C. 420=1930 Oudh 104 relied on in *Mt Shaher Bano Begam v. Raj Bahadur Singh*, 1933 Oudh 505. But see the earlier decisions of the court on the point in *Sarju v. Sheoraj*, 1926 Oudh 380=94 I. C. 179; *Awadhraj Singh v. Dharamraji Kuor*, 1929 Oudh 419; *Afzal Husain v. Shafgunnissa*, 1930 Oudh 368=126 I. C. 688. The anomaly of valuing such a suit arbitrarily or at less than the value of a suit for possession alone is well stated in *Ram Sekhar Prasad v. Sheonandan Dubey*, 2 Pat. 198=1923 Pat. 137. "Apart from authority it is also quite clear that the interpretation put by the appellants on section 7 (iv) (c) cannot be accepted; for if pushed to its logical conclusion it would lead to manifest absurdities. It is submitted that a suit for declaration of title and recovery of possession is a suit for declaration with consequential relief. If the section is to be literally construed, then while a plaintiff suing simply for possession would under sec. 7 (v) have to pay *ad valorem* fees on the value of the property, he would by joining a prayer for declaration pay an *ad valorem* fee on whatever smaller value he chose to put upon the consequential relief", In CALCUTTA and MADRAS such a suit has to be valued as a suit for possession at ten times the revenue, *Radha Kant Saha v. Debendra Narayan*.

Rates Tribunal under the *Railways Act*, 1921. The right to give instructions, of course, exists in Northern Ireland, and is imported into the case of the Irish Free State by the allusion to the Canadian practice, which is to govern the action as to assent, withholding assent, or reservation of Free State Bills. Instructions were also referred to in the constitutions of the Transvaal, Orange River Colony, Cape, and Natal, while, as we have seen, in the two former actual rules were laid down in the letters patent themselves requiring reservation.

There is a curious exception in the case of the Commonwealth. The provision in s. 58 is, 'When a proposed law passed by both Houses of Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure'. On this has been based the argument that the Governor-General must use his discretion subject to the Constitution, which introduces responsible government, and thus indicates that he is to act on ministerial advice in the usual way. This is plainly wrong, and indeed renders the reference to discretion ludicrous. The words 'subject to this Constitution' have a perfectly plain meaning; they allude to the fact that under s. 74 of the Constitution proposed laws diminishing the right of appeal to the Privy Council must be reserved. The discretion left is not a personal discretion; it is that of the representative of the Crown, and it is clear that the only proper use of the discretion is to reserve Bills in accordance with the advice of the Ministry or of the Secretary of State.<sup>1</sup> Either course is perfectly proper; the Ministry are excellent judges of whether it is right that a Bill should receive the approval of the Imperial Government, and that Government has full authority to protect itself. In the one case of reservation, save as regards merchant shipping under the *Merchant Shipping Act*, 1894, that

<sup>1</sup> Contrast Todd, *Parl. Government in the Colonies* (ed. 2), p. 169. The decision of the Imperial Conference of 1926 (Part VIII, chap. iii, § 8) to deprive Governors-General of representation of British interests cannot operate without legislation in this regard, as the power to reserve is statutory, and is much more convenient than disallowance, which conceivably (e. g. in the case of a Secession Bill) might be necessary; in the Irish Free State only reservation is possible (Const. Art. 41). Mr. Baldwin in the Commons (25 Nov. 1926) stated that no change in this regard was contemplated.

sented from in *Maroof Sahib v. Ayyakanmi Naicker*, 41 L. W. 562 referred to above by Venkatasubba Rao, J., who observes that the view of Jackson, J., in the above case seems to be based more upon some principle of natural justice than upon any provision of the Court-Fees Act and holds that suits for possession of land are in terms governed by s. 7 (v) and the fact that the melwaram right is not in dispute makes no difference. In *Venkata Lal v. Kasaldasu*, 1931 Mad. 24=33 L. W. 206=130 I. C. 449 the beneficiaries of a trust sued for possession of properties sold, mortgaged and leased by the trustees. The plaintiffs alleged the alienation to be not binding on the trust and attempted to pay a fixed court-fee of Rs. 100 under Schedule II Article 17-B. The report does not show that there was a prayer for a declaration also, but it seems to have been assumed that there was. The lower court held the suit came within clause iv (c) proviso and ordered the suit to be valued at half the market value. The plaintiffs having preferred a revision petition to the High Court, it was held that the value under clause iv (c) was only half of ten times the revenue and not half the market value. His Lordship was, however, of opinion that the suit could be valued under clause v, and observes: "The only alternative, so far as I can see, would be to bring the whole subject-matter under paragraph (v), but inasmuch as this would entail upon the plaintiffs a heavier court-fee than that already imposed upon them, it is unnecessary to consider this alternative".

**Other suits falling under the clause.**—Where a person left a will in favour of a lady describing her as his wife which status of wife was later on disputed by the reversioners to his estate who brought a suit for a declaration that his will is null and void and that the lady is not the widow of the deceased it was held that as the will had become operative after the testator's death, the plaintiff could not ask for a mere declaration but must also ask for the cancellation of the will. *Hukkam Singh v. Gyan Devi*, 36 C. 95. The question whether a plaintiff must sue for cancellation of a document under which defendant in possession claims, depends upon whether the onus of proving the circumstances establishing its invalidity lies upon him, or whether it lies upon the defendant to prove circumstances establishing its validity. *Andappa v. Tottappa*, 33 I. C. 441. Where the first relief in a suit relates to a declaration as to the general title of the plaintiff to all the properties she inherited and the second to set aside a particular deed of transfer in respect of a particular property inherited by her, it was held that the reliefs were not co-extensive but were separate and necessary reliefs and *ad valorem* court-fee must be paid in respect of both the reliefs as being for a declaratory decree with consequential relief. *Khiri Chand v. Musst Meghni*, 5 Pat. 496=1926 Pat. 453. A suit for a declaration that a registered deed does not affect the plaintiff's title is one clearly under s. 39 of the Specific Relief Act and such a suit is a suit for a declaratory decree with consequential relief.



assumption of a power to send a Bill home without expressing assent or dissent for the purpose of royal assent in England. In point of fact the practice in the Colony is to use suspending clauses as in the Acts (c. 4) of 1905 and (c. 1) of 1906 regarding foreign fishing-vessels, of which the former was allowed to come into operation by the Imperial Government, the latter not. It was noteworthy as it contained a reference to its coming into effect when ratified by the King in Council, possibly an allusion to the power of the Crown in Council to adopt a local Act as Imperial legislation under the authority of the Act of 1819 regarding the control of the fisheries of Newfoundland. It is clear that there is no limit of time to bringing into effect Acts containing suspending clauses, unless indeed the time is specified in these clauses; similarly in the Maritime Provinces of Canada before federation, when reservation was in use, assent could be signified without limit of date. It is interesting to note that the phraseology of the older royal instructions, whenever given, merely provides as a normal rule that the Governor shall not assent to certain classes of Bills, without specifying that he is to reserve the Bills in question, though by constitutional usage this is what he does. Express instructions to reserve any Bills which he is required by the Crown to reserve are given, however, in the Government of Ireland Act to the head of the Government of Northern Ireland.

Occasional instances of suspending clauses or reservation or confirmation by Order in Council are alluded to as necessary in other Imperial Acts in addition to Constitution Acts. Thus legislation regarding the coasting trade under s. 735 of the *Merchant Shipping Act*, 1894, must contain a suspending clause and must be confirmed by Order in Council as a condition of its validity, and legislation under s. 736 of the same Act requires a suspending clause. Under the *Colonial Courts of Admiralty Act*, 1890, Dominion legislation requires either a suspending clause, or reservation, or the previous sanction of the Admiralty. Reservation is naturally appropriate in the case of shipping Bills apart from the legal necessities under the Act of 1894, as they are measures necessarily falling under the provisions of the instructions regarding the reservation of Bills of importance affecting the trade and shipping of the United Kingdom, and this mode of procedure facilitates calm discus-

is to be taken despite anything to the contrary in the plaint as the value for purposes of jurisdiction. *Ghulam Haider v. Bishambar Das*, 140 I. C. 73=33 P. L. R. 458; See also *Armapurnayya v. Nagaratnamma*, 1926 Mad. 591. The plaintiff must put down one single and entire sum as representing the value of the total reliefs sought by him. He cannot put one value for purposes of court-fee and another for purposes of jurisdiction. *Basanta Kumari Debya v. Nalini Nath Bhattacharjee*, 57 C. L. J. 465; In the matter of *Kalipada Mukharjee*, 58 Cal. 281=1930 Cal. 686=34 C. W. N. 870. There is no direct authority for the court to interfere with the valuation set up by the plaintiff. But if the plaintiff makes an absurd and outrageous misrepresentation as to the value of his suit under paragraph iv (c) or (d), in order to have it tried by some particular court, the court can interfere with the valuation by invoking its powers under section 151 Civil Procedure Code. *Rajendra v. Bahu Rani*, 107 I. C. 330=1928 Oudh 260. See also *Bara Mall v. Tulsi Ram*, 107 I. C. 609; *Sunderabai v. Collector of Belgaum*, 43 B. 376=52 I. C. 897; *Tula Ram v. Dwarka Das*, 50 A. 610=1928 All. 248; *Maung Noe v. Maung Kha Pu*, 142 I. C. 705=1933 Rang. 40. In a suit for declaration with consequential relief, plaintiff is entitled to place any value on the suit and the value for purposes of court fee and jurisdiction is the value of the relief; but the defendant is entitled to take objection to the valuation given in the plaint, both as affecting the question of jurisdiction and as affecting the question of court-fee. When such objection is taken, the Court is obliged to enter into the question of whether the value is correct. *Krityanand Singh v. Dinu Manjhi*, 149 I. C. 109=1934 Pat. 234. See also *Mt. Zahur Bibi v. Sherifuddin Khan*, 1935 Pat. 68. On this point see the Full Bench decision of the Calcutta High Court in 61 Cal. 796 cited fully under Clause iv—general. It cannot be laid down as a universal rule that in all cases where the plaintiff sues for a declaration that he is the owner of the property in dispute and that it is not liable to be attached in execution of the decree of the opposite party and for an injunction, he will have to pay an *ad valorem* Court-fee on the value of the property. *Mt. Zahur Bibi v. Sherifuddin Khan*, 1935 Pat. 68.

In a suit for cancellation of a mortgage bond for several thousands of rupees the plaintiff put the valuation as Rs. 50; it was held that the High Court had no powers to revise the valuation and that its power to do so is limited to cases provided for by s. 9. which relates to profits arising from lands, houses, etc. *Chinnamal v. Madarsa Rowther*, 27 M. 480=14 M. L. J. 343. But this decision is no longer correct after the enactment of paragraph iv-A in Madras. As to how plaints for declaration with consequential reliefs should be valued, see *Ayimuddin v. Kadira Rowther*, 43 I. C. 995; *Chelasami v. Chelasami*, 24 M. L. J. 233 and as regards suits for bare declaration, see the observation of Wallace, J., in *Veeramma v. Butchiah*, 50 M 646=1927 Mad. 563.

infringed the security on the faith of which investors lent their money to the Government would properly be disallowed, and the pressure of financial opinion is sufficiently strong to render it quite possible that a Bill so offending would be disallowed if the Governor did carelessly assent to it. But the probability of any Dominion thus breaking faith is negligible, and Queensland's experience in finding borrowing precluded until she modified her confiscatory land legislation is not such as to encourage further movements in this direction, unless indeed the electorate loses its head altogether. The Canadian Provinces are unable to have their stocks listed as trustee securities simply because the Imperial Government has not the power of disallowance, and will not accept the suggestion that the Dominion Government might give an assurance that it would disallow on the request of the Imperial Government.

The power of disallowance is given formally in the case of all the Dominions, States, and Colonies, save the Irish Free State and Northern Ireland, though on the model of Canada the former should be subject to the ordinary rule. In the latter case it is clear that the fact that the Legislature can be overridden by Imperial Act, and that its powers are purely local, renders disallowance needless. The time allowed is two years from the date of receipt of the Act by the Secretary of State in the case of Canada,<sup>1</sup> New Zealand,<sup>2</sup> the Australian States,<sup>3</sup> and, formerly, the Cape and Natal; in the case of the Commonwealth<sup>4</sup> and the Union,<sup>5</sup> Malta, and Southern Rhodesia the period of a year only dates from the time of assent, a reflex of the easier communications of the present day; the same point was taken for reckoning the two-year period adopted in the Transvaal and Orange River Colony constitutions. In Newfoundland the period is wholly undetermined, but the custom in the Maritime Provinces before federation, and in that of Newfoundland, is disallowance within two years of receipt; in all cases the form of disallowance is by Order in Council. Moreover, disallowance must be complete; even in the case of the Crown Colonies<sup>6</sup> partial disallowance, which may be possible,

<sup>1</sup> 30 Vict. c. 3, s. 56.

<sup>2</sup> 15 & 16 Vict. c. 72, s. 58.

<sup>3</sup> 5 & 6 Vict. c. 76.

<sup>4</sup> Const. s. 59.

<sup>5</sup> 9 Edw. VII. c. 9, s. 65.

<sup>6</sup> A limit of time thus exists in the Leeward Islands, 34 & 35 Vict. c. 107; in Jamaica, and a few other cases.

s. 7 cl. iv (c). Where the suit was for a declaration that the decree obtained by the defendant decree-holder against the plaintiff was not binding and that the plaintiff was not properly represented in the suit and that the decree is a fraudulent one and the plaintiff prayed for possession of the properties also, and valued the suit at Rs. 9,000 the value of the property while the decree debt was for Rs. 22,000 it was held by the Calcutta High Court in *Ganesh v. Saradu*, 19 C. W. N. 895, following the Privy Council decision of *Phul Kumari v. Ghavi Shyam*, 35 C. 202, that the value of the action must mean the value to the plaintiff and that the suit was properly valued. See also *Venkata Narasimharaju v. Chandrayya*, 53 M. L. J. 267=105 I. C. 171=1927 Mad. 825. Where a decree was obtained by 1st defendant against 2nd defendant and the plaintiff claimed that it was collusive and fraudulent and obtained with a view to defeat his claim under his decree by rateable distribution, it was held that the prayer for declaration included virtually a prayer to set aside the decree and *ad valorem* court-fee must be paid on the amount of the decree sought to be set aside. *Pandarathnath Krishna v. Maroti Ganesh*, 1933 Nag. 214. It is submitted that the decision may well be reconsidered. Where the plaintiff sued for a declaration that a decree obtained against him by the 1st defendant was not valid and binding on him and for recovery of possession of the properties covered by the decree, it was held that the main relief was recovery of possession and that it could therefore be said to fall within s. 7 cl. (v). *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605. Where the plaintiff prays for a simple declaration that the previous decree is not in any way binding upon him and is altogether void and ineffectual, his suit is one for obtaining a declaratory decree only and falls under Art. 17 (3). *Sri Krishnachandra v. Mahabir Prasad*, 1933 A. L. J. 673=1933 All. 488 (F. B.). Where in a suit for partition a consent decree is passed, but subsequently a suit is filed for setting aside the decree, a prayer for partition or for possession would be unnecessary and court-fee of Rs. 15 for setting aside the decree alone need be paid. *Ratanchand Rewachand v. Anandbai*, 1933 Sind 53. Where a person sues for a declaration that an *ex parte* mortgage decree is null and void as against the plaintiff and for an injunction to stay the further progress of the case and the execution of the mortgage decree until the decision of the suit, the suit is plainly a suit for a declaration plus a consequential relief by injunction, as the question of court-fees must be decided in accordance with the prayer which is made in the plaint. If in such a suit, the value for the purpose of jurisdiction has been fixed at a certain amount, the valuation for the purpose of court-fees must be fixed at the same amount. *Dam Min Thwe v. C. R. M. C. Chettyar Firm*, 150 I. C. 1030=1934 Rang. 152.

Where the plaintiff's object in bringing a declaratory suit is to get rid of a decree passed against him in a previous suit, whether the

whole history of the control exercised by the Imperial Government and Parliament over the Dominions ; commencing with a wide degree of supervision from a superior standpoint, sometimes with scant regard for colonial susceptibilities, it has gradually been transformed into co-operation on a footing which steadily approaches more closely to the ideal of a Commonwealth of equal nations. It is, however, right to point out that this ideal is not yet actual ; the process of attaining autonomy is yet incomplete, and indeed must be incomplete, until the Dominions have both the strength and the will to accept a real position of equality.

In the case of Malta and Northern Ireland the status of self-government is markedly limited by special considerations which require distinct treatment. Southern Rhodesia, though also limited in authority, differs fundamentally from these two cases in that the restrictions on her power are clearly in themselves transitory,<sup>1</sup> and not intended permanently to be retained. It does not seem probable, on the other hand, that any fundamental change can be brought about in regard either to Malta or to Northern Ireland.

#### § 4. *Bills affecting the Governor, the Prerogative, and the Constitution*

The solemn insertion of the prohibition to assent to a Bill for a grant to himself in the royal instructions suggests a reflection on the integrity of officers of the Crown, which is nowise deserved. It has its origin in days when Governors could manage subservient Legislatures, and possibly is justified in the constitutions of the Crown Colonies even now.<sup>2</sup> The only case of its importance in Colonies under responsible government dates back to 1867-8, when the Assembly of Victoria sought to reward the Governor who had fought with them, as they held, against the tyranny of the Council, and had for his pains been recalled by a harsh Government, to which the Council appeared to possess the majesty of the House of Lords. Much more to the point is the prohibition in the Act of 1907 regarding the

<sup>1</sup> That as regards railway rates in effect became minimal under the scheme agreed upon in 1926 by the Imperial Government ; *Railways Act*, 1926.

<sup>2</sup> It is adopted for Papua by the Commonwealth *Papua Act*, 1905.

to provide for additional revenue and that no attempt was made "to revise the Act so as to reconcile conflicting decisions or to settle controversial questions". Consequently no special principle underlies the enactment except that its sole aim was to enhance the fees payable, in a certain classes of suits with a view to more income. This is in short an extension of the underlying principle in the Madras proviso to para iv (c) whereby the discretion given to plaintiff to value his suit as he chose was restricted and a minimum valuation was fixed in the class of suits specified in the proviso.

**2. Scope.**—The paragraph consists of two parts, the first part setting out the nature of the suits contemplated by the paragraph and the second part laying down definite rules for the computation of the value of such suits. The class of suits referred to are (1) those for the cancellation of a decree for (a) money or (b) other property having a money value and (2) other document securing (a) money or (b) other property having money value. These suits have to be valued according to the value of the subject-matter of the suit. Section 7 paragraph iv-A is not exhaustive. It applies only to specified classes of cases. Where the decree that is sought to be set aside is itself a declaratory decree or is not one for money or for other property having money value or the document sought to be cancelled is about property which has no money value, this paragraph could not apply. In such cases it is either Schedule II Article 17-A or s. 7 iv (c) that applies.

**3. Application.**—It need hardly be observed that but for the enactment of this paragraph, the general provision applicable to all suits for cancellation of decrees and documents is paragraph iv (c). As a matter of fact, clause (c) is applied to such suits in other Provinces and was also applied by the Madras High Court also prior to 1922 when paragraph iv-A was embodied in the Act. In the case of suits falling under iv-A, that paragraph alone has to be applied. *Alagar Ayyangar v. Srinivasa Ayyangar*, 50 M. L. J. 406; *Venkatanarasimha Raju v. Chandrayya*, 53 M. L. J. 267. *In re Lahshmi Ammal*, 49 M. L. J. 608, is a suit by a vendee for a cancellation of a deed of purchase of land for Rs. 2,000, wherein Rs. 1,000 was paid and a mortgage deed was executed for the balance of sale consideration. The suit was for (1) the cancellation of the sale deed, (2) the cancellation of the mortgage deed and (3) the recovery of Rs. 1,000 cash paid as sale consideration. It was held that para. iv-A applied and the suit should be valued at Rs. 2,000 the value of the property. Where the plaintiff sued for a declaration that a decree obtained against him by the 1st defendant was not valid and binding on him and for recovery of possession of the properties covered by decree, alleging that he was a minor when the prior suit was brought by the 1st defendant and that he was not properly represented in that suit, it was held that the suit was for cancellation of the decree and was governed by s. 7 cl. iv-A and not by s. 7 cl. (iv) (c). *Venkatasiva Rao v. Venkatanarasimha Satyanarayanamurthy*, 139 I. C. 317=63 M. L. J. 764=1932 Mad. 605. The observation

which action should be taken only in accordance with Imperial agreement, which was accorded, reluctantly or not, in the case of New Zealand as well as of the Irish Free State, and, of course, in that of the Union of South Africa.

As regards judicial matters the prerogative to grant special leave to appeal cannot be successfully restricted save by Imperial Act, and it has been so limited for the Commonwealth and the Union alone. It was clearly intimated to Canada in 1875<sup>1</sup> that any attempt to take away the prerogative when creating the Supreme Court would result in the reservation and probable lapse of the Bill, which therefore was framed to save the right. When in 1889<sup>2</sup> the right in regard to criminal cases was taken away by Dominion statute, it was done with the consent of the Imperial Government, but the attempt was, as repeatedly pointed out by the writer and as now ruled by the Privy Council, invalid as contrary to the express terms of the *Judicial Committee Act*, 1844. The attempt of Victoria to increase to £1,000<sup>3</sup> the limit of appealable cases was not interfered with, but that was due to the fact that the Imperial Order in Council being made under the authority of the Act of 1844 was held to override the statute.

There are objections from the point of view of the Imperial Government to needless regulation of prerogative matters by statute. Thus the Natal Act conferring responsible government was amended by desire of the Government to refrain from creating the office of Governor, as being a matter of prerogative. But since 1910<sup>4</sup> various Acts providing for the authority of the deputies of the Governors have been allowed, as there was doubt whether deputies could exercise without statutory authority the statutory powers of the Governor in cases where deputies were appointed merely under the prerogative, and not as in the federations and the Union under statute. The Dominion of Canada in its dealings with the Provinces has shown similar

<sup>1</sup> 38 Vict. c. 11, s. 47 (*Rev. Stat.*, 1906, c. 139, s. 59); Norton, *Nineteenth Century*, July 1879, p. 173.

<sup>2</sup> See Criminal Code of Canada, s. 1025; *Nadan v. The King* (1926), 42 T. L. R. 356. I cannot conceive how the Privy Council took so long to recognize a fact so clear, once attention was called by me to it.

<sup>3</sup> *Supreme Court Act*, 1890.

<sup>4</sup> Contrast *South Australia Council Deb.*, 1906, Sess. 2, p. 141; *Ass. Deb.*, 1906, Sess. 1, p. 191; Keith, *Imperial Unity and the Dominions*, pp. 71-3.

be declared to be a forgery cannot come under cl. (iv-A) as the plaintiff cannot be said to be a party to it and need not get it cancelled or set aside. *Nagabhushanam v. Venkatappayya*, 68 M. L. J. 95 = 41 L. W. 90 = 1933 Mad. 203.

A previous suit for possession of properties with past and future mesne profits and in the alternative for maintenance and past maintenance was compromised and a decree was passed in terms of the compromise. By this compromise, the plaintiffs withdrew their claim in respect of the immoveable properties and got a decree for maintenance. It was recited in the compromise that the claim for arrears of maintenance had been satisfied. The plaintiffs then brought a suit to set aside the compromise and the decree passed in the previous suit. It was held that the effect of setting aside the compromise decree would be that the suit, which had been withdrawn and in respect of which full court-fee on the value of the property had been paid, would have to be proceeded with, and the setting aside of that decree would not by itself give any property to the plaintiffs but would only give them the right to prosecute a suit which, according to them, had been terminated in a manner which is not binding on them, and that, therefore, the proper court-fee payable was that payable under Article 17-A of Schedule II of the Court-Fees Act as amended by Madras Act V of 1922 and not under s. 7 paragraph iv-A. Their Lordships further observed "It is difficult to see how the compromise decree which is sought to be set aside secures to the plaintiffs anything except the maintenance awarded. It does not secure them any immoveable property. The effect of setting aside the compromise decree will be that the suit which has been withdrawn and in respect of which full court-fee on the value of the property has been paid would have to be proceeded with and it is clear that the setting aside of the compromise decree would not by itself give any property to the plaintiffs but would only give them the right to prosecute a suit which according to them has been terminated in a manner which is not binding on them owing to fraud and other circumstances set out in the present plaint. \* \* \* \* We think the proper court-fee is that payable under schedule II article 17-A of the Court-Fees Act, as amended by Madras Act V of 1922. *Rani Kalandai Pandichi v. Indran Ramaswami Pandia Thalavan*, 55 M. L. J. 345.

### **Suit for cancellation and recovery of possession.—**

Where a prayer for declaration and cancellation is coupled with any other relief as for possession, what is the court-fee payable? It was held in *Arunachellam v. Rangaswami*, 38 M. 922, that where the suit for declaration fell within any other class of suits specified in s. 7, it must be treated as a suit of that description and dealt with accordingly. In *Rajagopala v. Vijayaragavalu*, 38 M. 1184, which was also a case of declaration and possession it was held as the possession was asked for not on any other ground but as consequent on the grant of the declaration the relief for possession alone has to be valued. But this



tures in the war period. No difficulty was ever made in accepting the admission of women to the franchise even at the time when the idea was quite unthinkable in England. Nor was any exception taken to the rather remarkable *War Time Elections Act*, 1917, of Canada, with its wholesale enfranchisement of women connected with the troops and disfranchisement of persons of alien enemy connexions, though it was denounced by Sir W. Laurier<sup>1</sup> as a deliberate attempt to alter the electorate in order to secure a verdict for the Government. Not less tolerant was the view taken of the Queensland Act which, in order to secure the Labour Party a majority in a critical period, provided for proxy voting, though such an arrangement was really straining decency rather far even for Queensland. There is no doubt of the wisdom of these abstentions; it is for the people to decide on these issues for themselves, and Imperial intervention would only be justified, if they were to be deprived of the right of passing judgement by the vote from time to time. On this principle the *War Time Elections Act* of Canada undoubtedly might have been condemned out and out, but there is something to be said for the fact that it was passed by such substantial majorities in both houses as to render it clearly an expression of the will for the time being of the people of Canada.

Akin to intervention in constitutional changes is the refusal to allow Bills which are *ultra vires* to remain in operation, in cases where the invalidity of the whole Act is patent, and it would be dangerous to leave it in operation. Thus in 1862<sup>2</sup> an Act of Canada was disallowed because it purported to permit magistrates in Canada to deal with offences committed in New Brunswick, for which purpose it was naturally held by the Imperial Government that an Imperial Act would be requisite, or alternatively extradition agreements between the Provinces rendered effective by local Acts, a course followed by the South African Colonies in 1905. In 1869,<sup>3</sup> however, it was thought sufficient to point out that a Dominion Act was *ultra vires* as purporting to penalize Acts done on the high seas, with the result that the error was undone by an amending Act of

<sup>1</sup> Skelton, *Sir Wilfrid Laurier*, ii. 528 ff.

<sup>2</sup> *Canada Leg. Ass. Journals*, 1862, p. 101.

<sup>3</sup> *Sess. Pap.*, 1870, No. 39.

necessity for which was of course questioned in the later decision in *Veeraragavali v. Sreeramulu*, 1928 Mad. 816) and for possession. The suit was valued as for possession. It was held that paragraph iv-A applied and that the suit should be valued according to the amount of sale consideration in the sale deed. That is practically the market-value and certainly not the statutory value as contemplated by paragraph (v). Contrasted with this is the decision of a division bench of the Madras High Court to which Odgers, J., who decided the 50 M. L. J. case quoted above was also a party. In that decision *Venkata-narasmiha v. Chandrayya*, 53 M.L.J. 267, it was held that "Where a decree affecting immoveable property is sought to be set aside, the subject-matter of that decree is the value of the immoveable property in that suit. In such a case the statutory value should be adopted and not the market-value of the property. When there is in the Court-Fees Act itself a special rule as to valuing the property in suits for court-fees, it is proper to take that method of valuation in preference to any other method to get the value where there is no indication that any other method should be adopted".

Now which is the correct view? It is submitted that it is the market-value that is contemplated in paragraph iv-A and that the decision in 53 M. L. J. 267 may well be reconsidered. Their Lordships including Odgers, J., who held the contrary view in 50 M. L. J. case, base their decision on the broad statement that where there is in the Act itself a special rule as to valuing the property it is proper to take that method of valuation. What is the special method indicated in this paragraph? It is simply stated "value." In the Act itself there are several methods for computing the value of property. It is the market-value in some places, *vide* s. 7 (iii), y (d), v (e), s. 9, Schedule I, Art. 11, etc. It is a statutory value in other cases as *e. g.* s. 7 v (a), and (b), and it is an arbitrary value in a still third class of cases as in s. 7 (i) and (ii). Why should one kind of valuation be chosen as having been indicated in para. iv-A? Where for instance it is the intention of the Legislature that the value should be calculated in accordance with paragraph (v) they explicitly state it. *Vide* proviso to s. 7 (iv) (c) Madras amendment and para (vi). That proviso and paragraph iv-A were both enacted by the local legislature at Madras at the same time and the mention of the methods of computation "*as under paragraph v*" in the proviso and the absence of any each mention of paragraph (v) in para iv-A, shows that valuation as per paragraph (v) was not contemplated in determining the value under para iv-A. Generally the word 'value' must be taken to mean only market-value. There is no definition of the term in the Act and wherever it is used it appears to apply to the market-value except in those cases in which an arbitrary calculation is authorised or directed by the Act. See the decision in 1 B. 118, where it was held that "value" mentioned in Sch. I Art. 11 was market value. Section 8 of the Suits Valuation Act lays down that the valuation for court-fees

affects or is alleged to affect the property of absent persons, the measure of self-government conceded to the Dominion might be reduced within very narrow limits'. The Bill, accordingly, was re-enacted with some changes, and became law in 1875. The same principle was reasserted by Mr. Chamberlain on 5 December 1898<sup>1</sup> in respect of Newfoundland railway legislation, and in 1908<sup>2</sup> it once more became of interest, because the Parliament of New South Wales had to legislate to defeat certain claimants, whose land claims derived from fraudulent transactions of a former Minister of Lands were intended to be included in the scope of an Act of 1906 by which it was proposed to settle the matter in the interest of the State. It was claimed that this Act was an unjust interference with legal rights of absent holders of land, but petitions to the Governor and the Imperial Government alike for refusal of assent or disallowance were rejected. The same thing happened in 1910<sup>3</sup> when the Commonwealth by Acts Nos. 21 and 22 proceeded to imitate the New Zealand rule of increasing land taxation on absent owners, in order to facilitate the breaking up of large estates. So, too, in spite of representations on the part of aggrieved persons, no steps were taken to disallow Act No. 28 of 1909 of the Transvaal which imposed a tax on the shares of companies engaged in mining in the Transvaal on their transmission on death, although such companies were registered and had their head-quarters in London, and though the deceased had no connexion of any kind with the Transvaal.<sup>4</sup> This remarkable impost was made effective by imposing the duty of payment on the company itself, if the representative of the deceased did not pay, with the result that the company reimbursed itself at the expense of the deceased by refusing to allow a transfer to be registered unless the demand were paid. On the other hand, a Tasmanian Bill of 1908 which imposed certain rather unfair obligations on foreign companies, i. e. those not registered in the island, was never assented to after reservation, because it was held to

<sup>1</sup> *Parl. Pap.*, C. 8867.

<sup>2</sup> See *The Times*, 27 June, 3 July 1908; Act No. 42 of 1906; No. 4 of 1908.

<sup>3</sup> A request that the Governor-General be instructed to reserve was declined, and petitions for disallowance rejected. The legality of the Acts was established in *Osborne v. The Commonwealth*, 12 C. L. R. 322.

<sup>4</sup> *Parl. Pap.*, Cd. 5135, pp. 105 ff.; Cd. 5746-1, pp. 267-9.

**Valuation where relief is claimed as regards plaintiff's shares**—In a suit to set aside a partition deed so far as the plaintiff's share of the property is concerned, court-fee has to be paid only on that share and not on the value of the whole property. *Govindan Nair v. Madhavi*, 138 I. C. 303 = 62 M. L. J. 712 = 1932 Mad. 491. See also *Karaga Gowda v. Sivappa Gowda*, 140 I. C. 585 = 36 L. W. 793.

**Summary.**—The effect of the decisions of the several High Courts and the enactment in Madras of paragraph IV-A may be summarised as follows :

1. A person who is neither a party to a document nor his representative need not have a document set aside or cancelled.

2. A superfluous or redundant prayer for cancellation of a document will not affect the real nature of a suit and will be ignored by courts. *Kattiya Pillai v. Ramaswami Pillai*, 1929 Mad. 396 = 56 M. L. J. 394.

3. Where a document has to be set aside or cancelled, a bare declaration is sufficient according to the view of the High Courts of Bombay and Rangoon but there must be a prayer for the consequential relief of cancellation according to the views of the High Courts of Madras, Lahore, and Patna.

4. Even in Madras, where the suit for cancellation is by a person who is not party to the instrument, a suit for a bare declaration would suffice. *Kattiya Pillai v. Ramaswami Pillai*, 1929 Mad. 396 = 56 M. L. J. 394.

5. In cases where the prayer for consequential relief is considered necessary if the relief sought is only for a mere declaration about the invalidity of the document and that the plaintiff's title to any property is not affected by it, the suit is construed to be a suit for declaration with consequential relief, "the application of any particular clause depending on the substance of the claim and not on the mere words used in the plaint." *Alagar Ayyangar v. Srinivasa Ayyangar*, 50 M. L. J. 406; *Achammal v. Achammal*, 20 M. L. J. 791.

6. The general provision of the Act for the cancellation of documents or decrees is either Article 17 (3) of Schedule II. for simple declaration or s. 7 iv (c) for declaration with consequential relief, though according to the recent decisions of the Allahabad High Court suits for cancellation of documents would fall within Sch. I., Art. 1.

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the case of the sale deeds, the amount of court-fee payable must be computed on the market value of properties with which they deal." The decisions in 53 M. L. J. 267 and 56 Mad. 212 were referred to. His Lordship further observed, "With great respect, there is a fallacy, as I have shown, underlying this reasoning. Sitting as a single judge, I should consider myself bound by these decisions, but the present case, as I have said, deals with mortgages and sales, whereas the two cases referred to above deal with decrees."

Later the necessity of again approaching the English market resulted in substantial concessions being made to both pastoralists and the Brisbane Tramway Company, after which the London market was again made available to Queensland. The episode was of special value as emphasizing the power of the world of finance to protect itself against spoliation. To borrow money in the United States was only possible on terms ruinously expensive to the State, and once the idea of confiscatory legislation was raised, it was clear that investors would fight shy of Queensland. The question indeed was raised whether the Imperial Government would in its altered attitude towards confiscatory legislation be willing even to disallow an Act impairing the security of Queensland Government loans, and it is not easy to feel complete assurance even on this head. A suggestion by the writer that in such cases as those of alleged confiscatory legislation arbitration should be resorted to by Dominion Governments on the proposal of the Imperial Government—and of course with similar procedure in claims by Dominion residents against the British Government—received no acceptance from the Premier of Queensland, nor was it taken up by Lord Milner. Nevertheless, it is clear that if difficulties should arise as to the interpretation of agreements between the Governments, as they did arise in cases of contracts during the war, when the Queensland Government was far from generous, or even just, in its claims on the Imperial Government,<sup>1</sup> or under the immigration scheme of 1925,<sup>2</sup> it would appear inevitable that arbitration should be resorted to, unless the Imperial Government should think fit to sue the Commonwealth or the State in the High Court, as doubtless it could do under the Commonwealth Constitution.

In the case of Dominion loans admitted to rank as trustee securities, the conditions requisite for admission include an undertaking to maintain sufficient funds in London to meet any sums ordered to be paid by a Court of competent jurisdiction, and an expression of opinion that Acts impairing the

<sup>1</sup> The State appears to have endeavoured to profiteer shamelessly and to have put forward claims of a flagrantly dishonest kind. There was far too much of this taking advantage of British good nature during the war, as also in the case of Canadian purchases for the Imperial Government.

<sup>2</sup> See *Parl. Pap.*, Cmd. 2640.

the Mofussil have also the same powers. *Rasul Karim v. Pirubhai*, 38 B. 381 = 24 I. C. 625; *Israil v. Shamser*, 41 Cal. 436 = 21 I. C. 861; *Kandaswami v. Subramania*, 41 Mad. 208 = 41 I. C. 384.

**Interim Injunction.**—In all cases where a temporary relief is granted to enure for a specified period or until further orders of Court or till the disposal of the suit, they are all ordered on interlocutory applications in the suit or appeal. They are rarely prayed for in the plaint itself. But where it is prayed for specifically or forms an item in the subject-matter of appeal, it is construed to be consequential relief. In *Gangadhar Misra v. Rami Devendrabala Dasi*, 5 Pat. 211 = 94 I. C. 22 = 1926 Pat. 249, the suit was one for declaration *but pending the suit* an injunction was obtained. On the dismissal of the suit an appeal was preferred *the injunction subsisting at the time of the appeal*. It was held that for the purposes of Court-fees, the appeal fell within s. 7 iv (c) and *ad valorem* Court-fee was payable on the consequential relief.

**Injunction coupled with other reliefs.**—Generally the relief for injunction is coupled with other reliefs like declaration, possession, etc. Such cases fall under two heads.

(i) **Where the relief of injunction is not an independent one** but naturally flows from the other main relief sought, it is ancillary to or merged in same. For example where the main relief sought is declaration the case is covered by paragraph iv (c) of the section which relates to suits to obtain a declaratory decree or order, where consequential relief is prayed for.

(ii) **Where the injunction is the main relief** and the other relief that is prayed for only paves the way for the grant of the main relief or flows from the relief of injunction then the case is converse of (i) and the other relief is the subsidiary one and is merged in the relief for injunction. Then clause iv (d) applies.

For a fuller discussion of this and reported cases under (i) above see commentaries under clause iv (c) "Declaratory decrees and consequential reliefs."

**When clause (d) applies.**—Clause (d) therefore applies only to cases where the relief of injunction is a distinct and independent entity by itself and is prayed for as a separate relief. In that case it must be separately valued, the valuation being entirely at the discretion of the plaintiff or appellant.

## Valuation.

### A—Court-Fees.

1. The plaintiff is at liberty to value it as he desires. *Guruvaianma v. Venkutarishnama*, 24 Mad. 34; see also *Maung Ngai Maung v. Mandalay Municipal Committee*, 12 Rang. 335 = 1934 Rang. 268; But see *Mohendra v. Dinabhandu*, 21 I. C. 771 and *Janki Sahary v. Lalbehari*, 94 I. C. 103 = 1926 Pat. 334, where while holding that it was open to the plaintiff in a suit for injunction to value it as he pleases, it was observed that where the lower Court found that the

## II

### IMPERIAL CONTROL OVER THE INTERNAL AFFAIRS OF THE DOMINIONS

#### § 1. *The Control of Crown Lands*

LORD DURHAM in his report on Canada contemplated that the Imperial Government would retain control of the public lands and inaugurate a systematic scheme of immigration;<sup>1</sup> but his advice was disregarded, and in 1840 (c. 35) and 1847 (c. 71) the legislation of the Imperial Parliament was directed towards giving the United Province the fullest power to deal with the public lands, including the lands originally reserved for the Church. The same generosity was shown to the Maritime Provinces when they received responsible government; they were asked to provide by Acts civil lists, as had been done by the Imperial Act of 1840 for Canada, but subject to that the Crown was pleased to divest itself of its land rights in their favour. If two Nova Scotia Bills of 1847 did not become law, Acts of 1848 and 1849 (cc. 21 and 1) were more fortunate, and Prince Edward Island in 1851 (c. 3) was allowed to obtain the somewhat empty pleasure of control of the lands in return for a civil list. In 1852 (c. 39) it was realized that these grants were strictly speaking *ultra vires*, for by the Civil Lists Acts of William IV and Victoria<sup>2</sup> these Colonial land revenues ought to have been paid into the Imperial Exchequer to the credit of the Consolidated Fund. But this error was made innocuous by a formal surrender confirming in general terms what had been done. Yet Prince Edward Island got little out of its new authority. It passed in 1851 an Act (No. 814)<sup>3</sup> to fix in currency rents which in sterling were too burdensome, especially as they were paid to absentee landowners, who had received grants from the Crown directly or indirectly without valuable consideration of any kind. This was promptly disallowed. The

<sup>1</sup> *Report*, ii. 13; cf. Wakefield, *Art of Colonization*, p. 313.

<sup>2</sup> 1 Will. IV. c. 25; 1 & 2 Vict. c. 2. For New Brunswick, see 8 Will. IV. c. 1; Hannay, ii. 1 ff.; 3 Cart., 20 ff.

<sup>3</sup> *Parl. Pap.*, H. C. 529, 1864, p. 41.

*Mirzapore*, 48 All. 412=94 I. C. 951=1926 All. 423; *Govind v. Hammaya*, 59 I. C. 777; *Shrimat Sundaribai v. Collector of Belgaum*, 43 B. 376 (P. C.).

2. The valuation for purposes of court fees is to be determined first and that for purposes of jurisdiction must follow the same. *Manni Lal v. Gopalji*, 47 All. 501.

3. Where the plaintiff puts a valuation for jurisdiction higher than that for court-fees, the higher value for jurisdiction will be ignored. In *Govinda v. Hammaya*, 45 Bom. 567, the plaintiff in a suit for injunction valued his claim for Court-fee purposes at Rs. 10, and for purposes of jurisdiction at Rs. 500. The decision of the lower court that the latter value of Rs. 500 is to govern both was not upheld by the High Court which held that the plaintiff was entitled to value his claim at Rs. 10 for court-fee purposes and that it was wholly unnecessary for him to fix any value for the purpose of jurisdiction and that the Rs. 10 value governs both.

4. But a plaintiff cannot obtain the services of a higher tribunal for the determination of his claim by putting a higher valuation for jurisdiction and evade payment of court-fee by fixing a lower value therefor. *Manni Lal v. Gopalji*, 47 A. 501.

Thus it was held in *Kanhaiya v. Jagrani*, 46 A. 419, that though the plaintiff was at liberty to value the relief claimed by way of injunction at whatever figure he pleased, still if for the purpose of obtaining an adjudication from a court of superior grade, he elected to place a high value on the suit, he was bound to pay court-fees accordingly. See also *Jogeshra v. Durga Prasad*, 36 A. 500. The distinction between the decisions in 46 All. 419 and 45 Bom. 567 is that in the former case the adjudication by a superior tribunal was obtained and in the latter case no question of jurisdiction of the tribunal arose.

5. Where a suit is valued for purposes of jurisdiction, but no value is given for purposes of court-fee, then the value for jurisdiction is the value for Court-fee also. *Annappurnayya v. Nagarathamma*, 1926 Mad. 591. Jackson, J., observes as follows "If the plaintiff had entered as his value for jurisdiction Rs. 10,000 and his value for *ad valorem* court-fee say Rs. 5,000, following the ruling in *Sailendranath Mitra v. Ramachandran*, 34 C. L. J. 94, the Court no doubt would take Rs. 5,000 as the value for the purpose of jurisdiction; but if the plaintiff enters as his value for jurisdiction Rs. 10,000 and owing to his misreading of the Court-Fees Act omits an *ad valorem* valuation altogether, considering the two valuations must be the same, the Court is justified in assuming that Rs. 10,000 would also be the *ad valorem* valuation for court-fees".

**Bombay Amendment.**—This clause has been amended in Bombay by Bombay Act II of 1932 by which the words "or other consequential relief" have been added: The effect of the amendment is not quite clear. The use of the word "or" indicates that when consequential relief is prayed for as an additional relief the clause is



her boundaries were extended in 1912, and despite energetic efforts on the part of the provinces, agreement to give Alberta her lands was reached only in 1926, nor did it even then become law.

Newfoundland was granted full control of her lands with responsible government in 1855, and in New Zealand, after the effort to settle the territory through the aid of the New Zealand Company, power was given in 1852<sup>1</sup> to deal with the Crown lands, subject to the existing rights of the Company. In 1856 it was decided to refuse assent to a measure to confer on the provinces the power of regulating the disposal of the waste lands of the Crown, as the matter was held proper for the central Legislature. In Australia<sup>2</sup> the grant of responsible government was accompanied by the grant by a special Act of power to the Colonies to regulate the management of waste lands, though the authority as regards Western Australia was retained in Imperial hands until responsible government was conceded in 1890. In this case an energetic fight was made for the retention of the control of the lands in Imperial hands, but the Governor pointed out that it was in fact impracticable to work any such policy, and this argument was accepted by the Parliamentary Committee which examined the question. The Cape received control of lands with representative government in 1853, Natal in 1856, and this power, of course, was continued under the new status of responsible government in 1872 and 1893, though in Natal native lands were placed by letters patent under a trust which was made statutory just before union. In the case of the Transvaal and the Orange River Colony it was felt proper to seek to make some provision to aid the unfortunate settlers, who had been introduced under Lord Milner's foolish and futile scheme for converting the racial character of the Colonies, by establishing Land Settlement Boards to last for five years with vague powers to advance the settlers. These needless bodies have naturally long since ceased to function. In Rhodesia the removal of the burden of the land claims of the British South Africa Company was accomplished before responsible government by the decision of the Privy

<sup>1</sup> 15 & 16 Vict. c. 72, ss. 72-8 ; s. 73 on native rights was repealed (under 25 & 26 Vict. c. 48) by the *Native Land Act*, 1873, s. 4.

<sup>2</sup> 18 & 19 Vict. c. 56.

and simple under s. 7 iv (d). The lower court construed the suit as one for declaration with consequential relief and holding that iv (c) is the proper provision applied the Madras Proviso thereto and held the value should not be less than half the value of the paramba. The value was computed at 5 times the assessment under para v (b). The defendant went one step further and contended before the High Court, that the value should be the market-value of the paramba under para. v (e) and not the statutory value under v (b). This was not accepted by the High Court nor the lower court's decision that the Madras proviso applied. Jackson, J., construed the words 'with reference to' in the proviso, as meaning 'involving the possession of' land, houses or gardens and held that the proviso would not be applicable to easements at all. But the learned judge observes that the lower court "has correctly pointed out that it is a suit for declaration with consequential relief falling under s. 7 iv (c)". Of course s. 7 iv (c) is a general provision which will have to be applied only where there is no other specific provision in the Act applicable to a particular case. The clause (e) is a special clause enacted to apply to cases of easements and such 'benefits arising out of land.' The subject-matter of the suit was also held to be 'neither land, nor house nor garden but an *easement* over the same'. Where for instance the relief is for a declaration that a document is void and for cancellation thereof, the suit was held to fall under para iv-A as that specifically provides for that class of cases, and not under iv (c) though but for the existence of iv-A, it would be the proper clause to be applied. Similarly in the present cases it is submitted that clause iv (c) could be applied only if no such clause as iv (e) is in existence. But where there is a specific provision that alone should be applied in preference to iv (:). Further it seems hardly necessary to add that the phrase 'not herein otherwise provided for' occurring in clause (e) cannot justify the application of clause (c) to the present suit on the ground it has been thereby 'otherwise provided for,' though that phrase could be more appropriately included in clause (c) rather than in clause (e). It is therefore submitted that either clause (e) by itself or coupled with clause (d) applies to the present case instead of clause (c).

**Doorway.**—A suit to have a doorway closed is a suit relating to an easement. *Chadan v. Taleb*, 2 N. W. P. 41.

## PARAGRAPH IV (f) SUIT FOR ACCOUNTS.

**Scope.**—This paragraph deals with suits for accounts. Though these are suits for money, still from the very nature of the action it may not be possible for the plaintiff to predicate exactly what the value of his claim is. It will only be an approximate one and it is this value that determines the court-fee as well as the forum. *Ijjathullat v. Chandra Mohan*, 6 C. L. J. 255.

**Order VII, R. 2 (2) C. P. C.**—Civil Procedure Code O. 7, r. 2, sub-clause 2 provides that where the plaintiff sues for an amount

Similarly the long indifference or opposition of Australian opinion<sup>1</sup> to immigration, which persists to-day in Labour circles, as was shown at the Conference of Labour Parties of the Empire in 1925, can be explained as due to the selfish desire to enjoy as much profit as possible from the possession of great natural resources, while relying on the British fleet to secure uninterrupted possession by a small population to the exclusion of the overcrowded people of Japan and India. Nor is it unimportant that New Zealand in 1926 was unable to do anything to co-operate with the Imperial Government in its scheme of promoting settlement, or that for years the funds provided by the Imperial Government to effect this end on the basis of equal expenditure with the Dominions could not be spent for lack of Dominion support.

But the fact remains that it was out of the question to reserve the lands and to grant responsible government at the same time. The lands provided the most obvious source of revenue for the new Colonies, and, if withheld, there would have been need of Imperial subsidies, which assuredly negate responsible government. Moreover, legislation touches land at every turn, and to deny to the Legislatures the right to legislate so as to affect land would have been incompatible with responsible government, while, if the right was used, the Imperial Government would have been under the control of the local administration in its land policy. The whole issue was considered with anxious care in 1889-90<sup>2</sup> in connexion with Western Australia, and the evidence adduced is convincing against the possibility of any of the schemes suggested for Imperial action. The analogy of the provinces of Canada is illusory. Apart from the constant struggle on the part of the provinces to secure authority from the Dominion, the Dominion is a most powerful national government present in the provincial area and able to exercise its power, while the Imperial Government was far away, and *ex hypothesi* would have been interested in settlement only.

<sup>1</sup> Compare the fiasco of the operations as regards the Commonwealth of the British Government's emigration proposals of 1921-6. Doubtless the British control has been incompetent, but that is a minor matter.

<sup>2</sup> *Parl. Pap.*, C. 5743, 5752, 5919, 5919 I. See also Grey, *Colonial Policy of Lord John Russell's Administration*, and Adderley, *Colonial Policy*; Battye, *Western Australia*, pp. 392 ff.

*Sheikh Adam*, 39 Bom. 545; *Ma Thin On v. Ma Ngwe Hmon*, 12 Rang. 512.

### Suits for accounts.

(1) **Nature of account suits.**—The essence of a suit for accounts is that the sum which the plaintiff claims is an unascertained sum only to be arrived at by the taking of a regular account between the parties. The fact that the defendant claims a certain sum as due to him and that consequently some accounts have to be taken cannot give the suit a character of a suit for account. Where the plaintiff sued to recover a sum of money due on a commission agency account and the defendants denied the liability and pleaded that an account should be taken and the trial court passed a preliminary decree for accounts and the defendants appealed and valued the claim as a declaratory relief, it was held that the suit is not one for an account and that the same falls under paragraph (1) of s. 7 of the Court-Fees Act. *Pochalal v. Umedram*, 52 B. 904=1928 Bom. 476 =30 Bom. L. R. 1284.

(2) **Suits for accounts as contrasted with suits for money.**—The distinction between para (i) and iv (f) is that in the one case the plaintiff sues for a definite sum of money which he alleges to be due to him from the defendant and on which he is to pay an *ad valorem* court-fee and in the other the plaintiff is unable to say what the amount due to him from the defendant is and he is therefore unable to claim a definite sum and consequently fixes a *pro forma* or imaginary valuation which may involve a subsequent liability to pay an *ad valorem* fee. "The main test is what is sued for, and the test has reference to what is asked for in the plaint and not to any question or dispute that may arise upon any pleading of the defendant" per Fawcett, J., *Pochalal v. Umedram*, 52 B. 904 at page 908. It has been held in *Kashetranath Benerjee v. Kali Dasi*, 21 C. W. N. 784, that "there cannot be a suit for accounts by the plaintiff against the defendant unless the defendant is under a liability to render accounts to the plaintiff." See also *Suryanarayana v. Raja of Visianagaram*, 137 I. C. 871=1932 Mad. 565. "A suit for an account is a recognised form of action in English Common law, and its history is fully given in Story's Equity Jurisprudence, Vol. I, pp. 416 to 420. At first it was a very limited kind of suit, but it gradually got extended to any suit which depended upon a liability to furnish an account." In a suit for money pure and simple, the plaintiff is not suing an 'accounting party'. He is the 'accounting party' himself suing the defendant for a definite sum of money which he says is due to him. There may be a case also where both the parties to a suit are accounting parties as for instance where each of two merchants keeps his own accounts of their mutual transactions. In such a case there is a mutual account, and there is an obligation on each side to render accounts to the other. There is also the suit where the plaintiff though not the accounting party cannot

be responsible for the financial transactions of the Colonies being repudiated with energy.<sup>1</sup> In 1895 the Newfoundland Government, owing to the distress caused by the failure of the Commercial Bank, asked the Imperial Government to guarantee the sum of £20,000 for twenty-five years as interest on bonds which it was proposed to issue, but the proposal was refused on the sound ground that the Imperial Government must leave it to the Colony to find its own finance. On the other hand, an offer was made to send out a Commissioner to inquire into and relieve distress. The Government asked again for a loan to enable the savings bank to meet deposits, but this also was declined in principle, though Sir H. Murray was dispatched as Commissioner and £20,000 placed at his disposal.<sup>2</sup> Sir H. Murray was later appointed Governor, and on 22 and 28 February 1898 he reported the details of an arrangement entered into by the Government and presented for his signature, under which in the view of Mr. Chamberlain 'all the Crown lands of any value become, with full rights to all minerals, the freehold property of a single individual, the whole of the railways are transferred to him, the telegraphs, the postal service, and the local sea communications as well as the property in the dock at St. John's', such an abdication by a Government of some of its most important functions being in his opinion without parallel. The contract was also protested against by the Anglo-American Company as an interference with its exclusive rights under Act No. 2 of 1854 to build and work telegraph lines, and to land cables, while the Opposition asked that the Governor should be forbidden to assent to the Bill to approve the contract, which the Government hurried through the Legislature. Mr. Chamberlain, however, in a telegram of 2 March<sup>3</sup> and a dispatch of 23 March<sup>4</sup> made clear that the constitutional responsibility in the matter rested entirely with Ministers, subject to due provision being made—as was done by a second Act—to safeguard the rights of the Anglo-American Company. The Government then sought to obtain the appointment of a Royal Commission, as had been suggested in 1890-1, to consider financial aid to the Colony; but this was declined,

<sup>1</sup> New Zealand *Parl. Pap.*, 1873-4, A. 2, No. 25; *Colonial Stock Act*, 1877.

<sup>2</sup> *Parl. Pap.*, H. C. 104, 1895; C. 7686.

<sup>3</sup> *Parl. Pap.*, C. 8867, p. 3.

<sup>4</sup> *Ibid.*, pp. 23 f.

Act to preclude such arbitrary valuation, still the prevailing view is that the valuation for court-fees and jurisdiction should conform to the real value of the relief sought. For a case where the valuation for jurisdiction was taken as the value for court-fees, see *Pothi Annapurnayya v. Pothi Nagaratnamma*, 92 I. C. 730=1926 Mad. 591.

**Valuation for court-fees: The Suit.**—It is provided by O. VII r. 2 C.P.C. that the plaintiff should give an approximate valuation for the relief he claims in a suit on accounts. But it may be noticed that the wording of para 4 of s. 7 of the Court-Fees Act is not exactly as that in the Code of Civil Procedure. In the Act the plaintiff is given the liberty to value the suit as he chose and apparently there is no restriction on the plaintiff's discretion requiring him to fix such a figure as will be approximate to the real value of his relief. This difference may not perhaps be of much practical importance as there is a sufficient safeguard in s. 11 of the Act whereby, if the actual value of the relief granted to plaintiff exceeds the tentative value fixed by him, the court has got the power to call upon the plaintiff to make good the deficit and the revenue is thereby protected. Still, it is unfortunate that there should be any difference in language between the two enactments in respect of a particular suit. The reason for this divergence is apparently due to the fact that the Court-Fees Act, having been enacted long prior to the present Code of 1908, no attempt has been made to keep the former Act properly amended so as to accord with the provisions of the Civil Procedure Code—*vide* the observations of Justice Sulaiman in 47 All. 756 at page 759. The current view is that the plaintiff in an account suit can put his own valuation on the relief claimed by him. "The option or discretion of the plaintiff in fixing his valuation is not confined to those cases where the value of the relief cannot be ascertained at the time the plaint is presented though possibly combined with other circumstances the fact that such relief can be ascertained might be a reason for holding that the suit for accounts does not lie. The plaintiff is entitled to exercise the privilege of valuing his relief at any figure he chooses and the stamp will have to be made up subsequently if relief of greater value was granted to him." *Rikkhikesh v. Melaram*, 1926 Lah. 242. See the recent decision of the Madras High Court in *Kandaswami Pillai v. Arunachalam Pillai*, 139 I. C. 105=35 L. W. 846=1932 Mad. 656, that it is open to the plaintiff to value a suit for accounts as he likes, and that even if during the course of the trial he should state in his evidence that far larger amounts are due to him, it is not open to the court to require him to revise the valuation and pay additional court-fee. But see cases cited under the heading "O. 7, R. 11, C. P. Code" *supra*. The plaintiff is entitled to pay court-fee on the value he had thought fit to give to the relief sought notwithstanding that he had through mistake or inadvertence stated the value for purposes of jurisdiction at a different figure. *Suryanarayana v. Raja of Vizianagaram*, 137 I. C. 871=1932 Mad. 565.

responsibility should attach to a Ministry amenable to the Colonial Legislature.

In regard to disallowance there were insuperable reasons against Imperial intervention. The Act was declared by the Finance Minister essential for financial solvency; if disallowed, the Imperial Government would necessarily come under the obligation of securing such solvency by its intervention, an impossible position. If the machinery of government proved imperfect, it did not lie with the Imperial Government to remedy its defects, or to intervene between the people and their representatives, who had passed the Act by 31 to 5 in the Lower, and unanimously in the Upper House. The point that the alienation of the assets of the Colony was diminishing the assets, on the faith of which the creditors of the Colonial Government had advanced funds, was met by the observation that the loans were advanced on the general credit of the Colony, not on the specific assets, which were indeed mainly potential, and in any case the borrowers must look to the Colonial Government.

No doubt if it was seriously alleged that the Act involved a breach of faith or the confiscation of the rights of absent persons, Her Majesty's Government would have to examine it carefully, and consider whether the discredit which such action on the part of a Colony would entail on the rest of the Empire rendered it necessary for them to intervene,

but no such charge was made. Further, the principle was laid down :

The right to complete and unfettered control over financial arrangements is essential to self-government, and has been invariably acknowledged and respected by Her Majesty's Government, and jealously guarded by the Colonies. The Colonial Government and Legislature are solely responsible for the management of its finances to the people of the Colony, and, unless Imperial interests of grave importance were imperilled, the intervention of Her Majesty's Government in such matters would be an unwarrantable intrusion and a breach of the charter of the Colony.

In other parts of the Empire no such spectacular cases have occurred. In 1862<sup>1</sup> a reserved Victorian Bill to grant a preferential lien on growing crops without delivery was not assented

<sup>1</sup> *Parl. Pap.*, H. C. 196, 1894, pp. 8 f.

the observations of Sulaiman, J., in *Chunni Lal v. Sheo Charan*, 47 All. 756. Commenting on an earlier case of the Allahabad High Court *Kanhaiya Lal v. Seth Ram Sarup*, 44 A. 542, and a decision of the Patna High Court *Kuldeep Sahay v. Harhar Prasad*, 75 I. C. 841, the learned Judge observed thus "I may point out that the cases in 44 All. and 75 I. C. are distinguishable because the defendants in those cases, in appealing had not appealed from the whole decree but had admitted their part liability. Thus the identity of the subject-matters in the first court and the court of appeal was not the same. It may therefore be said that as there was no valuation by the plaintiff of the subject-matter in dispute in appeal it was open to the defendant to value it according to his own estimate." It is therefore clear that where there is no identity of the subject-matter in the suit and in the appeal the appellant is not bound to value the appeal as in the plaint. See *Mahomed Rahmoo Mowji v. Ibrahim Gangji*, 98 I. C. 909 = 1927 Sind 100 and also the Madras F. B. decision in 39 M. 725 discussed *infra*.

**(B) Where the subject-matter in the appeal is co-extensive with that in the suit,**

(1) Where the plaintiff is the appellant, then, he is bound by the value given by him in the plaint, *Firm of Mohmod Rahmo v. Ibrahim Gangji*, 1927 Sind 100. But some doubt is thrown on this proposition by the observations of Justice Ramesam in a decision of the High Court of Madras in *Re Nukala Venkatanandam*, 56 M. 705. It was held—though it was only an appeal by the defendants—that in an appeal relating to the accounts of a partnership, the appellant, whether plaintiff or defendant, can give his own valuation under s. 7 (iv) (f) of the Court-Fees Act and pay court-fee on it. It is respectfully submitted that the correctness of this decision is open to question and it may well be reconsidered. For further discussion see below.

(2) Where the defendant is the appellant there is a divergence of views between the several High Courts. There are two possible views and they are summarized in *Chunni Lal v. Sheo Charan*, 47 All. 756 as follows:—

"One view is that the valuation given by the plaintiff in his plaint and by the defendant in his appeal ought to be the same where the subject-matter in dispute is indential. 'After all it is the plaintiff who puts forward a claim, whether it is a true one, a false one or an exaggerated one.' The subject-matter in dispute is the amount claimed by the plaintiff whether that claim is just or unjust. It would therefore seem quite reasonable to say that when the subject-matters are identical the defendant ought to value his appeal according to the valuation put by the plaintiff in his plaint which really represents the amount claimed by him whether the defendant admits it or not."



### III

## THE TREATMENT OF NATIVE RACES

### § 1. *Reservation of Bills*

IT is curious but historically possible of explanation that the royal instructions have contained few references to the reservation of Bills affecting native races. In Canada the Imperial Government retained control over Indian affairs for some time after responsible government,<sup>1</sup> and, when it transferred responsibility, it did not feel any necessity of seeking to retain any control. In Australia the aborigines ceased early to be of importance in the greater part of the area, and up to 1890 in Western Australia the Government was under Imperial control. The case was other in New Zealand, but the representation of the Maoris in the Legislature rendered it undesirable to include provisions for the reservation of Bills affecting them, having regard to the system of protection of their land interests under the constitution. Newfoundland had too few natives under its control to render special provision appropriate. In Natal, however, on the grant of responsible government it was provided that the Governor as Supreme Chief should be given an independent position, while all Bills of the Parliament differentially affecting natives were to be reserved, and this requirement was included in the Transvaal and Orange River Colony letters patent of 6 December 1906 and 5 June 1907 respectively. In these two cases a further provision was made; the Governor was given all the powers exercisable as Paramount Chief over the chiefs and the natives; the Governor in Council, on the other hand, was authorized to summon an assembly of native chiefs, and, if thought fit, other persons experienced in native affairs, to discuss questions as to the administration of native affairs, the Governor in Council being required to consider the representations made by any such assembly. Any land set apart for natives was not to be liable to be alienated save under a law. These provisions became

<sup>1</sup> *Parl. Pap.*, H. C. 247, 1856; H. C. 575, 1860. See also *Sess. Pap.*, 1877, No. 11.

*Firm of Mahmed Rahmoo Mowjee v. Ibrahim Gangji*, 1927 Sind 100. See also *Motimal v. Molap Bai*, 79 I. C. 923.

The CALCUTTA High Court has also taken a similar view in *Banwari Lal v. Shoe Shanker*, 1 I. C. 675 and also the PUNJAB High Court in *Kanji Mal v. Panna Lal*, 28 I. C. 262.

**The Allahabad view.**—The opposite view that could compendiously be called the Allahabad view is found in the decision, *Kanhaya Lal v. Seturam*, 44 All. 542. There it was held that a defendant appealing against a preliminary decree passed against him was entitled to put his own valuation in the appeal and that he was not bound to accept the plaintiff's valuation. Reference was made to 39 M. 725, and it was observed thus "I do not know if the learned judges who formulated this decision were thinking only of a preliminary decree or had in mind the possibility of an appeal against a final decree in a suit for accounts." And their Lordships doubt the correctness of the Madras view thinking that it would be inequitable in the case of appeals against final decrees to apply the original tentative valuation put on the suit by the plaintiff." With due deference it is submitted that there has been a misapprehension about the decision in 39 Madras. Even the later decision of the Allahabad High Court in 47 All. 756, does not entertain this doubt as to the exact scope of the Madras decision. It is one thing not to accept the decision but it is quite a different thing to state that there is any doubt as to whether the Madras decision related to appeals from final decrees as well, and direct criticism against it on the supposition that it related to appeals against final decrees while it did not. In 47 A. 756 at page 764 it is stated "In 39 Madras 725 F. B. there was a preliminary decree for accounts followed by *an appeal against the whole preliminary decree*." It is therefore clear that the observations in 44 A. 542 really miss the point.

This was followed by a later judgment of the same court, in *Chunni Lal v. Sheo Charan*, 47 A. 756. The whole case law on the subject was discussed and in his leading judgment Sulaiman, J., has set out the point of view of the Allahabad High Court. "The main question is whether it was open to the defendant to put a valuation different from that fixed by the plaintiffs in their plaint. The question is not free from difficulty because there is a clear conflict of opinion between the various High Courts. The MADRAS High Court has clearly laid down that the valuation once fixed by the plaintiff must be adhered to at subsequent stages unless of course the identity of the subject-matter is different. *Samiya Mavali v. Minam-mal*, 23 M. 490; *Srinivasachari v. Perundeviamma*, 39 M. 725. The PUNJAB High Court in the case of *Kanji Mal v. Panna Lal*, 28 I. C. 262 and the CALCUTTA High Court in the case of *Bunwari Lal v. Daya Shunker*, 13 C. W. N. 815, had inclined towards the same view. On the other hand there is an observation of Tudball, J., of the ALLAHABAD High Court in the case of *Bhola Nath v. Parsolain Das*, 32 A. 517, which supports a contrary view though it was not

the Governor shall not assent, except with prior approval of the Secretary of State, to any law, not containing a suspending clause, by which natives are made subject save as regards arms, ammunition, and liquor, to any conditions, disabilities, or restrictions to which persons of European descent are not subjected. The clause, therefore, applies to any law with legal effect, so that if any Act is passed irregularly it is null and void, and the restriction cannot itself be removed except by legislation which itself must be reserved. Further, the High Commissioner for South Africa is given a definite measure of control over the administration.<sup>1</sup> His approval is necessary to the appointment of the permanent head of the Native Department, of Native Commissioners in their various grades, and Superintendents of Natives; their duties can be varied only with his permission, their salaries increased or diminished, or their removal from office carried out. No differential conditions, disabilities, or restrictions may be placed on natives without the consent of the High Commissioner, unless the details are laid down in a law duly assented to by the Crown; but there is the usual exclusion of restrictions regarding arms, ammunition, and liquor. The lands vested in the High Commissioner by the Southern Rhodesia Order in Council, 1920, shall remain so vested for the sole and exclusive use of the natives, and can be disposed of only as directed in the Order, and then only in exchange for other suitable land. A native may acquire, encumber, and dispose of land, but any contract for encumbering or alienation must be certified by a magistrate to be fair and reasonable, and to be understood by the native concerned. The Governor is required to furnish the High Commissioner with any information he desires relating to native affairs. Moreover, on the High Commissioner's request the Governor in Council must refer any question relating to natives for report to any High Court judge, and the judge shall thereupon make such inquiry as he thinks fit, and shall report to the Governor in Council, who in transmitting the report shall state what action is to be taken in the matter. In case of a revolt against the Government, or other misconduct by a native chief or tribe, the Governor in Council may, with the approval of the

<sup>1</sup> ss. 39-47. It is very dubious if the control means much. A Governor-General is hardly likely to be an active guardian of native rights.

judges who gave the decisions based them on. As a matter of fact in the 3 Patna case the subject-matter of the appeal was different from the subject-matter in first appeal. In *Phulartand Coal Coy. v. Bur. rakar Coal Coy.*, 1930 Pat. 605=128 I. C. 795, it has been recently held that where the liability which has been found to exist by the trial court is denied *in toto* or where liability is denied for a portion of the claim, it is not open to a defendant appealing from the decree to value his appeal otherwise than at the value which the plaintiff has placed upon his relief. The view of Patna High Court is thus not only that where the defendant appeals from the whole decree the value of the appeal should be the same as that of the suit, but that even an appeal against a portion of it should be valued at the amount at which that portion was valued in the plaint.

**The conflicting views considered.**—The view of the Allahabad High Court in 47 A. 762 is sought to be supported for the following reasons :

(a) "The defendant who has all along been contending that he is being made the victim of a wholly extravagant claim should be permitted to bring his appeal against the preliminary decree without being penalised in court-fees by reason of the heavy valuation put upon his claim by the plaintiff." 44 A. 542. This position is fully answered by the following extract from the decision in 1927 Sind 100. "The plaintiff has no doubt a certain amount of latitude given to him to value the relief and unless his valuation is grossly inadequate or improper, the court does not interfere. It is, all the same, presumed to represent as fair a value of the subject-matter as the case admits. Can it then be said that it is open to the plaintiff to contend that he should be allowed to put a different value on the same subject-matter when he is appealing from his non suit and if not can it again be said that it is open to the unsuccessful defendant who fails to challenge the plaintiff's valuation at the proper time and who must therefore be deemed to have acquiesced in its being not grossly inadequate or otherwise improper, to contend that he should be permitted to put a different valuation upon it when appealing?"

(b) "It may not be easy to determine in every case whether an appeal is to be regarded as an appeal against part only of the decree. The appellant might easily refrain from appealing against an entirely negligible portion of the decree against him solely with the deliberate intention of evading the rule that he must value at the total valuation made by the plaintiff if he appealed against the whole decree. I do not find in principle any marked dividing line," 47 A. at p. 767. But this is no special feature in an appeal in an account suit. For instance, in an appeal from a decree in a suit for redemption of mortgage though the right to redeem was not seriously pressed in the trial court, the appellant is not precluded from putting that as one of the grounds of appeal—though he never intended agitating it—with a view to pay a lower court fee on the valuation of the mortgage amount rather than an ~~and valuation~~ fee on the amount in dispute. The existence of such

practice of the local Government to appropriate for that purpose were from time to time to be conveyed by the local Government to the Dominion, in trust for the use and benefit of the Indians on application of the Dominion Government. In case of disagreement between the two Governments regarding the quantity of such tracts of land to be so granted, the matter must be referred to the decision of the Secretary of State for the Colonies.<sup>1</sup>

As has been seen, the legal position of the Indian reserves is anomalous. The right of the Indians does not alter the fact that the land is vested in the provinces in ownership, which becomes real and valuable as soon as the Dominion extinguishes in any area the Indian title by agreement with the Indians. The Privy Council ruling that Canada had no legal claim on the provinces for the refund of expenses incurred in ending the Indian title would have caused complete cessation of such extinction, but in the case of Ontario the matter was amicably arranged by an Act, the *Indian Reserve Lands Act*, 1924, giving effect to an agreement between the Dominion and the province as to the treatment of such cases.

The claim has repeatedly been made by certain of the Indian tribes, in special the Six Nation Indians, that they are not British subjects but allies of the United Kingdom, and the coming into being of the League of Nations rendered it possible to revive with some show of reason the old claim. Efforts were made at the Assembly of 1923 to have the treatment by Canada of the Indians made a subject of discussion, the representative of Persia moving actively in this sense, with a laudable desire for the spread of those democratic principles for which Persia is noted. Ultimately the Canadian representatives, who had found the issue tedious and had been surprised that it should be seriously taken up, were successful in securing the ruling that the Indians had no *locus standi*.<sup>2</sup> Fortunately, by assuring the tribes of their anxiety to further their education and to pay just attention to their grievances, it was found possible to come to an amicable settlement with the Six Nations in 1925. The Indians in Canada showed a praiseworthy interest

<sup>1</sup> In view of the great expense incurred in 1911 (c. 24) in securing the removal of the Songhees Indians' reserves in British Columbia, an Act (c. 14) was passed to arrange for taking of reserves compulsorily, on compensation, with Parliamentary approval.

<sup>2</sup> *Canadian Annual Review*, 1923, pp. 209 ff.

tion on the appellant". Speculation on the intention of the legislature is always of doubtful utility and much more so in the case of the Court-Fees Act. The language of the section is clear and there is no getting over the fact that the word "plaintiff" alone is used.

Sulaiman, J., too has realised the difficulties arising from the Allahabad view, and observed as follows in 47 A. 762 at page 763. "I am conscious of the fact that in some cases this interpretation of the section (*viz.*, that the defendant need not accept the plaintiff's valuation) will be unsatisfactory and may lead to inconvenience, *e.g.*, the plaintiff may value his suit for accounts at a certain figure in the first court and may succeed; the defendant when appealing may value it at another figure and may succeed; and then the plaintiff in coming up in second appeal will have to revalue it at the original figure. The absence of uniformity is likely to be embarrassing but the result is due to the drafting of the section as it stands". With due deference therefore it is submitted that it is safer to give a literal construction to the section though it may not appear to be quite logical or permits an evasion of the rule than to import into the section words that are not in it and when even the construction that so follows is found to be "unsatisfactory and leading to inconvenience" to hold that "the embarrassing result is due to the drafting of the section as it stands."

**The Privy Council decision.**—In *Faizullah Khan v. Mauad Khan*, 10 Lah. 737 = 56 I. A. 232 = 31 Bom. L. R. 841 (P. C.) = 56 M. L. J. 281 = 1929 P. C. 147 the plaintiffs valued their suit at Rs. 3,000 for the purpose of court-fee and asked for a rendering of accounts and a decree for Rs. 3,000 with a statement "if more than Rs. 3,000 be found due to the plaintiffs, they will pay an additional court-fee". The defendant challenged the plaintiffs' claim and asked for a decree in his favour for Rs. 29,000. The court negatived the plaintiffs' claim and passed a decree in favour of defendant for Rs. 19,991. This judgment was appealed from by both parties. The plaintiffs by their appeal challenged the decree against them for Rs. 19,991 and maintained that their own claim of Rs. 3,000 or less or more should be granted in their favour. They valued their appeal, for purposes of court-fee at Rs. 19,991 and paid the court-fee thereon. It was contended that the plaintiffs should pay court-fees in appeal on Rs. 3,000 *as well as on* Rs. 19,991. Their Lordships negativing the contention held that the court-fee paid was sufficient. Lord Tomlin observed:—"In section 7 the amount of the fee is to be computed, in suits for accounts, according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. If, therefore, the appellant values the relief in the memorandum of appeal, and pays a fee thereon, that is the amount of fee properly payable. Of course, if the appellant recovers more, he pays the extra fee under section 11 of the Act. But you cannot complain that the amount valued in the memorandum of appeal is not the proper amount. In suits for accounts it is impossible to say *at the outset* what exact amount the plaintiff will recover. The Legislature,

the Government, and taught self-reliance, but the Indians objected bitterly to it on the perfectly legitimate score that an enfranchised Indian became entitled to receive a definite proportion of the treaty money paid to the band, and to have a portion of the tribal land allotted to him, which he might then sell to a European, with the result that the area for the tribe was diminished and broken up. The Six Nation Indians were specially loud in protest, and in 1922 Mr. Meighen's Act was amended to abolish this power of compulsion, substituting instead an investigation of any desire by an individual, or the majority of the male members of a band, for enfranchisement, by a board of two officials and a member of the band, and insisting that an essential feature of the investigation must refer to the man's desire to be enfranchised. This wise and just Act was somewhat bitterly opposed by the Conservatives, who renewed the attack in 1924, when the Government secured the passing of a Bill to give the Superintendent-General control over Esquimaux<sup>1</sup> affairs, a step necessary in view of the growing contact of the white men and these natives. The Act further removed a doubt created by the badly worded Act of 1920, and revived the terms of the Act of 1918 which provides for the enfranchisement of any Indian not living on a reserve or holding land there, who applies for enfranchisement, and is willing to take his share, if any, of the treaty money due. The same Act permits an unmarried Indian girl of twenty-one and over, and a widow and her minor children to obtain enfranchisement in the same way.

In 1923 a measure of agreement was at last reached between British Columbia<sup>2</sup> and the Dominion for a settlement of the Dominion claims for extra lands for the Indians, while a Joint Royal Commission of the Dominion and Ontario Governments arranged the settlement for 500,000 dollars, to be paid by Ontario, of the claims of the Chippewas and the Mississaugas of Huron and Simcoe counties for the loss of hunting and fishing grounds in northern and central Ontario; the Commission bore emphatic testimony to the transparent honesty of the Indians and their real attachment to the British connexion.

<sup>1</sup> Cf. Bernier, *Cruise of the Arctic*, 1908-9, pp. 316 f.

<sup>2</sup> Cf. British Columbia *Sess. Pap.*, 1907, F. 33; 1908, D. 47. For the legal issues see Part IV, chap. i; Ontario *Sess. Pap.*, 1908, No. 71; for the settlement cf. Ontario Act, 1924, c. 15. For Quebec see Act of 1922, c. 37.

The latter is the proper value as the figure has been ascertained in final decree proceeding. If it is contended that what the appellant sought to avoid was only the decree against him and that his appeal was not to get what he prayed for against the defendant, the answer is both claims form part of a simple action for accounts and the appellant has valued the appeal according to the higher relief. The P. C. decision cannot be considered to mean that the appellant need not value his appeal at Rs. 19,991, nor Rs. 3000, but that he could give any other figure he chose to put.

(a) The main reason given by their Lordships of the Privy Council for accepttng their approximate valuation of the appeal was, that under section 11 the balance court-fee could be recovered from them at the time of execution, should a decree for a higher amount be ultimately awarded to them. Section 11 applies only to a plaintiff and his suit. It does not apply to a defendant. Now the appeal in the Rangoon case was by the defendant. In the suit the defendant did not plead a set off or counter claim. His plea was merely limitation and denial of the partnership. He cannot therefore be regarded even analogously as a plaintiff. The subject-matter of a defendant's appeal is ordinarily not a claim by him to recover any amount, but only the liability which has been fastened upon him by the decree of the lower court and which he wants to get rid of in appeal. Section 11 is therefore naturally not designed to apply to him or to recover any additional court-fee from him. The main plank on which the Privy Council decision rested was therefore absent in the Rangoon case and the drawing on the Privy Council case for support in it is, it is submitted erroneous. The balance court-fee due for any excess amount decreed to plaintiff can be recovered from him under section 11. But nothing can be recovered from a defendant under that section.

(b) It is provided in section 7, clause (iv) that "in all such suits the *plaintiff* shall state the amount at which he values the relief sought". The use of the word "*plaintiff*" here is significant. When the two provisions section 7 clause iv (f) and section 11 are placed in juxtaposition and construed with reference to each other, the reason why the Legislature gave the plaintiff alone liberty to approximately value the amount of his claim becomes apparent. Now, the provision in section 7, clause iv (f) when fully set out is thus: "Fees shall be payable in suits for accounts, (1) according to the amount at which the relief sought is valued in the *plaint* or *memorandum of appeal*; (2) in all such suits the *plaintiff* shall state the amount at which he values the relief sought". The word "*suit*" in this clause is not synonymous with "*plaint*". It is wide enough to include both *plaint* and *memorandum of appeal*. Compare the wording "*plaint or memorandum of appeal in a suit*" in Article 17 of Schedule II. The Legislature has advisedly used three different expressions, "*plaint*," "*memorandum of appeal*," and "*suit*" in the clause to connote three different ideas. The clause says that the *plaintiff* (not appel-



on the natives made necessary. Unfortunately for peace, the device occurred to the Ministry and Sir G. Grey to punish those who defied their authority by confiscations, and a period of war ensued, during which from 1864-6 a net total of 3,568 square miles of valuable land were appropriated, and Sir G. Grey fell foul of the Imperial Government and forces. On his retirement in 1867, the British forces had been reduced to one regiment, which was withdrawn in 1870, but his successor in 1868-71 was involved in a further more or less needless war. A minor outbreak was brought about in 1880-1 by tactlessness, and again in 1886 there was unrest, but in 1888 the Maoris affirmed their approval of the principle of the co-operation of Maoris and Europeans as one people and loyal obedience to the laws of the King. Indeed throughout it is difficult not to feel that they were much more sinned against than sinning, the lure of their lands being, as in Kenya, too much for the covetousness of the colonials.

In 1867<sup>1</sup> a step of great importance was taken in appointing four native members to be elected by Maoris to be members of the House of Representatives, and from 1872 two Maoris were added to the Council. The maintenance of the number of the Maori representatives as against 91 Europeans in 1881, 70 in 1890, and now 76, gives the Maori voter rather more representation proportionately than the European, and the Maoris have often had great weight in a nicely balanced House, it being their custom to use their influence to support the party which is most considerate of their needs. The presence of a half-caste Maori on the Executive Council was secured in 1899 and affords an excellent method of securing that due attention be paid to the interests of the native race, whose numbers after a long period of stagnation have commenced to increase, until they have reached some 54,000. To these must be added a number of half-castes, all of whom in the South Island live as Europeans, while most Maoris there do so likewise, and it was anticipated that by 1926 there would in that island be no real cultural difference. The merger of the race seems indeed inevitable, but it may be a slower process than was expected.<sup>2</sup>

The question of securing the natives in their lands was first

<sup>1</sup> The abortive constitution of 1846 (9 & 10 Vict. c. 103) would have excluded Maoris from the franchise, and that of 1852 was not much better.

<sup>2</sup> A Maori may adopt a European; *Arani v. Public Trustee*, [1920] A. C. 198.

and that means that the appeal can be valued at nothing and has no subject-matter. This would amount to an absurdity, for under Sch. 1 Art. 1 every appeal has a subject-matter and value. After all, it is the plaintiff that knows his claim best and it is he and not the defendant that has to pay the additional court-fee under section 11. And he (plaintiff) valued his claim in the case at Rs. 30,000. There is no meaning in the defendant valuing it at Rs. 3,000, when he himself says that it is worth nothing. It appears therefore reasonable that the value set by plaintiff should prevail in the whole course of the litigation so long as the subject-matter remains identical. To allow a defendant-appellant to value his appeal differently from the plaintiff would lead to great anomalies. The Madras Full Bench decision, therefore is, it is submitted, perfectly correct and its force has not been in any way detracted from by the Privy Council decision, and it is supported by the decisions of the Lahore, Patna, Calcutta and Sind Courts. The Rangoon decision is also based on the supposed view of the Patna High Court in 3 Pat. 146. But as stated above, in its latest decision 1930 Pat. 605, the Patna High Court takes the same view as Madras. See also *Batna Ram v. Rahmatullah*, 1931 Lah. 143. The rule is the same whether the defendant appellant denied the claim in toto or in part. *Phulartand Coal Co. v. Burrakar Coal Co.*, 1930 Pat. 605.

This decision (9 Rang. 165) was not followed in a recent decision by a Division Bench of the same court in *Mg. Po Nyun v. Daw Ngwe Bwint*, 1933 Rang. 410, where the suit was under sub-clause (c) of the same clause iv, and it was held that the general rule is that when the suit has been decreed in full and the appeal is against the whole decree the value of the appeal is the same as that of the original plaintiff. The facts were: Plaintiff filed her plaintiff, stating that she was in possession of certain land and asking for a declaration that a certain deed of gift which she had given to the defendant is of no legal effect whatever and merely records a benami transaction. She also asked for delivery of the deed to herself in order that it might be cancelled and for cancellation. She valued the suit at Rs. 13,489, that apparently being the value of the land covered by the deed of gift, and paid court-fee on it. The suit was decreed as prayed for. Defendant preferred an appeal from the whole decree and sought to value the appeal arbitrarily at Rs. 500 for purpose of Court-Fees, relying on the above decision in 9 Rang. 165. He contended as held in that case that in suits under cl. iv the plaintiff in the trial court and the appellant in the court of appeal is the person to make an estimate of the value of the relief that is claimed. But their Lordships distinguished that case in that the suit there was one for accounts under sub-clause (j), observing that "in a suit for accounts the value of the appeal is probably not the same as the value of the original suit." This is a practical dissent from the 9 Rangoon case as the subject-matter of the appeal there was identical with that of the suit. Their Lordships went on to observe that what cl. iv says is that "in all such cases the plaintiff

the Supreme Court, after a full investigation, pointed out that the Act of 1909 secured the native title completely, and made the Native Land Court the proper Court in which to deal with any question arising out of it, such as the claim of certain natives to have an exclusive right to fish in part of Lake Rotorua. It was attempted by the Solicitor-General to argue that the mere statement on behalf of the Crown that the bed of the lake was Crown land free from all native title was sufficient to dispose of the matter, but the Court would not accept this view of the prerogative, which, even if it existed, they ruled could not be adduced without authority by the Solicitor-General. It appears, therefore, that the title to native land in New Zealand is now completely safeguarded, subject to the power of the Crown by proclamation to declare under s. 85 of the Act of 1909 that the right has in any case been duly extinguished. That by legislation, or by action under legislation, the title of the natives can be extinguished is admitted on the ground that such legislation is a matter of eminent domain, but the Crown has no right simply to issue a Crown grant, and to claim that that binds the natives.

Native education was first systematically encouraged by an ordinance of 1847, and further sums were provided by legislation of 1858 which allotted £7,000 a year for the purpose, but not until 1871 was any real progress made by the adoption of a workable system. In 1879 the work done justified transfer of control from the Native Department to the Education Department, which in 1925 was educating over 6,000 children in 124 schools, while an equal number attended European schools along with European children.

The loyalty of the Maoris showed itself prominently in the Great War, as did that of the Cook Islands, which by Imperial Order in Council were included from 10 June 1901 within the boundaries of New Zealand but have a special form of administration under Acts of 1915 and 1921. The Act of 1915 provides that a member of the Executive Council shall be Minister for the Cook Islands, with a Secretary for the Islands in New Zealand, while there are Resident Commissioners at Rarotonga and Nive, with Resident Agents in other islands if necessary. The Act also established Island Councils at Rarotonga and Nive, authorizing the establishment of further Councils if

wanted to vacate the decree of the lower court for Rs. 12,770-6. He sought to value his appeal at a lower figure *viz.*, Rs. 5,500. It was held that he was entitled to do so, the Privy Council decision being interpreted in the same manner as in the Rangoon case above. The objection of the respondent that s. 11 did not apply to a defendant and that the Privy Council decision, where the plaintiff and not the defendant was the appellant, was based on s. 11 as seen from the observation of Lord Tomlin was negatived, it being observed that s. 11 was not exhaustive on the point and that the position of a defendant in an account suit just as in a suit for partition was analogous to that of a plaintiff. Says his Lordship Ramesam J, "Lord Tomlin referred to s. 11 of the Act, but it seems to me that s. 11 may not give adequate remedy to the Crown . . . . S. 11 no doubt furnishes one method, but for the protection of the interests of the crown it is necessary to indicate what the proper practice should be. If the appellate court after the hearing and consideration of the appeal comes to a conclusion in favour of the appellant in respect of a far larger amount than what he has paid court-fees for, the proper thing would be to post the case for orders and direct the appellant to pay additional court-fee, and only then the judgment should be delivered and the decree should be allowed to be drawn up. I think this protects the Crown's interest properly . . . . I may add that an appellant, whether defendant or plaintiff, is in the position of a plaintiff in appeal at least in suits for taking accounts of a partnership and in partition suits. In such suits it has been held that every party is in the position of a plaintiff—*Vide* 1914 M. W. N. 155 and 12 L. W. 563. In the first of the above cases the defendant actually paid court-fee on the footing that his position is analogous to that of the plaintiff. In the latter case it was observed that the effect of the plaintiff being allowed to withdraw was to allow defendants 8 to 10 to become plaintiffs in his stead". His Lordship then referred to and dissented from the earlier Madras decisions that in appeals by defendants from preliminary decrees the same valuation as in the plaint should be adopted.

The decision is open to grave objections. In the first place, it is inexpedient to say that the Court-Fees Act is not exhaustive and that a subject can be taxed by applying the Act analogously. A fiscal enactment should be interpreted strictly, and where there is no express provision in the Act applicable to any particular matter, it is not permissible to charge any court-fee on it by applying to it analogous provisions of the Act expressly applicable to other matters. If s. 11 expressly applies only to a plaintiff and not to a defendant, it is not lawful to apply it to a defendant and charge court-fees by saying that the position of a defendant in an account suit is similar to that of a plaintiff. If necessary, a defendant appellant may be allowed to value his appeal as he likes, but no additional court-fees can and should be charged on his appeal after a decree is given in his favour. As authority for the position that a defendant in an account suit can be treated as a plaintiff for purpose of court-fees, his Lordship refers to:

§ 4. *Australia*

In Australia the aboriginal race at the time of settlement may have numbered as many as 150,000, but this is mere guesswork ; what is certain is that in New South Wales and Victoria the contact with the European race rapidly proved fatal to the numbers of the natives, and that in the other colonies the same phenomenon has been observed, the Australian native being, if not primitive in any accurate sense of the term, an unfortunate species of the human race, who developed, in isolation from external influences it would seem, a complex social system which is in itself far from satisfactory to others than researchers into the origin of totemism, and in any case is useless to safeguard him from European destructive influences. The total numbers of the present day are speculative, but not probably more than 63,000, with 13,000 more half-castes ; in Tasmania the last full-blooded aboriginal, the last remnant of a very peculiar race, died in 1876, and the great majority of the natives are to be found in Western Australia, in the Northern Territory, and in Queensland. Little more can be done in New South Wales and Victoria, which have both excellent legislation <sup>1</sup> for the care of the aborigines, than secure them lands and supervision as they dwindle away ; in 1925 New South Wales was spending about £35,000 on 1,554 full-blooded natives and some of mixed blood, while Victoria's Aborigines Protection Board had 317 under its care at a cost of £6,000. In South Australia <sup>2</sup> at the end of 1924 there were about 650 in attendance at mission stations, and the total cost of the aborigines is about £25,000 annually ; before handing over the Northern Territory an elaborate Act, No. 1024, was passed to secure the natives from unfair treatment. The Commonwealth spends on them about £10,000 a year, and about 1,500 were in residence at the mission stations, while much larger numbers received occasional assistance when they chose to come within the limits of civilization. In Queensland <sup>3</sup> the aborigines are of value in the pearling fishery as well as in regard to the care of stock ; in 1923 there

<sup>1</sup> Act No. 25 of 1909 (New South Wales) ; Nos. 1059 and 2257 of 1890 and 1910 (Victoria).

<sup>2</sup> *Ass. Deb.*, 1910, pp. 647 ff., 673 ff., 696 ff., 709, 721.

<sup>3</sup> See the Acts of 1897 (No. 17) and 1902 (No. 2) establishing the department to care for aborigines. Cf. *Parl. Deb.*, 1910, pp. 1032 ff., 1610 ff.

not be possible to predicate the value of plaintiff's claim before accounts are taken. But what is the difficulty after the claim has been definitely ascertained and one party is found to be due to the other a definite sum? The proper construction and it is submitted the only proper construction of clause iv of s. 7 in the Court-fees Act, is to apply it only if the value cannot be known. For instance s. 7 iv (a) refers to a case of a suit for recovery of moveables which have no market value. Then it can be valued as the plaintiff chooses. Suppose it has a market value. Then s. 7 cl. 3 applies. Why? Because the cases set out in cl. iv apply only to cases where the value could not be ascertained. If the value becomes ascertained by the passing of a final decree then the right of the appellant to value as he chooses is at an end. In the Allahabad case *Sharfuddin v. Khadim Ali Khan*, 1934 All. 807, where the facts were similar to that of the Madras case in 56 Mad. 705 commented on above, the decision of the court was in accordance with the view expressed above. There the appeal was by the defendant against a decree for Rs. 10,000, passed in favour of the plaintiff in a suit for dissolution of partnership and accounts. The appellant claimed a decree in his favour for such amount as may be found due and valued the appeal at Rs. 1000. It was held that the valuation was arbitrary and could not be accepted and that the subject-matter of the appeal being the decree for Rs. 10,000 and interest, *ad valorem* court-fee must be paid on that amount. In this decision, the effect of the Privy Council decision is discussed at length and it is held that the ruling is inapplicable to a defendant's appeal against a decree for a definite sum of money passed against him. The above Madras decision in 56 Mad. 705 is also considered and dissented from.

In the Sind case *Shivadas v. Hariram*, 1933 Sind 322, the facts were similar to those of the Privy Council case. The plaintiff had valued the suit tentatively at Rs. 200 and paid court-fes on it. The result of the suit was however unexpectedly against him. Not only did he not get a decree in his favour but he was ordered to pay a sum of Rs. 1,400 to the defendant. He filed an appeal disputing his liability to pay that sum and prayed for a decree in his favour and valued the appeal at Rs. 200. It was held that the test for determining what is the proper court-fee payable on a memorandum of appeal is "what is the value of the relief granted which is sought to be got rid of," and that the plaintiff was practically seeking two reliefs, *viz.*, to get rid of the decree for Rs. 1,400 which has been passed against him, and to get a decree for an additional amount to be passed in his favour and that he must pay court-fee on Rs. 1,400 as well as on Rs. 200. It was also held that the provisions of the Court-fees Act s. 7 cl. iv (f) are controlled by O. 7 rr. 2 and 11, which require a suit for accounts to be valued *approximately, not arbitrarily*. As regards the Privy Council case the court observed that it was differently reported in different reports, and distinguished it as an appeal from a remand order and therefore as applying to the particular facts of the case, and

part of the settlers, while exploring expeditions were too fond of treating natives as potential enemies, and even the legal practice of handcuffing natives and conveying them, when suspected of crime, long distances to prison was susceptible of serious abuse. The Government, however, in an Act, No. 42 of 1911, showed its anxiety to assist the natives by providing for the better education and care of half-castes, which, though involving removal from parents, gave them a better chance of a more happy and useful life ; it also allowed the setting aside of reserves in excess of the former limit of 2,000 acres, and forbade any native to plead guilty to a charge without permission of the Protector, a very necessary provision, as natives had often been known to plead guilty in order to propitiate their captors. Efforts have been made by the allotment of reasonable areas and the gift of cattle to induce the natives to settle down and stop raiding the cattle of the settlers. In 1924 the number of those natives cared for in native institutions was 540, and the average annual expenditure on natives is about £31,000. The total expenditure in the Commonwealth has grown in a satisfactory manner of recent years, being now over £150,000 as compared with £56,000 in 1906. Efforts are made at all the institutions and mission stations to encourage the natives to do such work as they can manage, while elementary education is given to the children. The future of the aborigines is far from promising. The franchise is denied to them in Western Australia, Queensland, and the Northern Territory.

In Papua <sup>1</sup> the natives, who are, quite by guesswork, asserted to number about 275,000, are in the main virile, and their health is cared for by two travelling medical officers with an assistant, who are training native assistants. The land rights of the natives are fully respected, and the considerable areas of Crown land are dealt with on the system of leasehold with reappraisal on unimproved value. Labour contracts are carefully regulated to provide for their voluntary character, and the proper treatment and food of the natives ; a magistrate must satisfy himself that the native is willing and will not be detained or ill-treated ; the period may not exceed eighteen months for carriers or mining, three years in other cases, and the remunera-

<sup>1</sup> J. H. P. Murray, *Review of the Australian Administration in Papua from 1907 to 1920*.

(A) The appeal may not be co-extensive with the claim in the suit. In that case, both the plaint and the appeal may be valued as the plaintiff or appellant chooses.

(B) The appeal may be co-extensive with the suit.

(1) The appeal may be from the preliminary decree and

(a) the appellant may be the plaintiff. The appellant should value the appeal as in the suit, though due to a misapprehension of the Privy Council decision, there is some conflict even about this obvious proposition—See the observations in 56 Mad. 705.

(b) The appeal may be by the defendant. In this case it is submitted the value should be the same as the suit, though there is some conflict of decisions on the point, which has been further complicated on account of the Privy Council decision. Prior to that decision, the views of the High Courts of Madras, Bombay, Calcutta, Patna and Punjab and the Sind Court were that the defendant should give the same value for his appeal as the plaintiff gave for his suit while the High Court of Allahabad and the Judicial Commissioners' Court of Nagpur held the opposite view. But since the Privy Council decision, the Bombay High Court has changed its view and it would appear that the Madras High Court also is inclined that way from the broad statement of law laid down in 56 Mad. 705. But as observed above the change of view is due to some misapprehension of the scope of the Privy Council decision. Perhaps a distinction may be made between this case and the case of an appeal by a plaintiff.

(2) The appeal may be from the final decree. There could be no doubt that the valuation of the appeal, be the appellant the plaintiff or defendant, is the specific amount decreed by the trial Court, which is sought to be got rid of and the question of the appellant valuing the appeal as he chooses cannot possibly arise though in view of the comprehensively worded judgment in the Madras case in 56 Mad. it is not possible to state what the law really is, so far as Madras is concerned. The entire case-law on the point has been upset and settled views rudely shaken by the *obiter dicta* in the Madras case that whether the appellant is plaintiff or defendant, whether the appeal is from the preliminary decree or the final decree the appellant can value the appeal at any amount. This sweeping statement, it is submitted is not at all warranted by the Privy Council decision and pushed to the logical extreme will upset the whole trend of decisions and the scheme of the Court Fees Act, a piece of legislation which even as it is, is loosely and inartistically drafted and difficult to interpret. The task is certainly not made easier by this cluster of irreconcilable decisions.

### **Combined appeal.**

Where a combined appeal is filed both from the preliminary and the final decree.—It was held in *Dumbadara*



were 1,519,488 to 5,409,092, of whom 4,697,813 were Bantu, 165,731 Asiatic, 545,548 mixed and other. The estimates for subsequent years indicate no prospect of any fundamental change in the proportions, and it is natural to assume that the Bantu population is growing at a rate which, unless the European is reinforced by migration, will give it steadily a greater predominance.

The treatment of natives has differed fundamentally in the Cape and the rest of South Africa.<sup>1</sup> In the Constitution of the Cape as settled in 1852-3 the principle was adopted by the Duke of Newcastle that natives should have the same political rights as the white man, and the changes in this doctrine since adopted in the Cape have only been in accordance with the principle of Cecil Rhodes that there should be equal rights for all civilized men south of the Zambezi. Thus the legislation of 1892,<sup>2</sup> which terminated the possibility of claiming a property qualification on mere tribal tenure, and the requirement of ability to write one's name, secure that electors shall not be merely the instruments of a tribal chief or some European manipulator. The number of such voters in the Cape is about 41,000, having risen steadily from the 21,000 of 1909, and they number about a fifth of the whole of the voters. It is true that the vote is resented by those white voters who object to any security for fair treatment being accorded to natives, and the prejudice of the other colonies succeeded in 1909 in excluding any native from eligibility to be elected a member of Parliament, but the franchise was left untouched and protected by the provision above quoted.

The results of the equality of voting power have been that in the Cape the native has been allowed, save in the Transkeian

<sup>1</sup> Cape *Parl. Pap.*, 1909, A. 2 and G. 19; 1910, G. 26; Wilmot, *South Africa*, ii. 173 ff., 196 ff.; iii. 22 ff.; Vindex, *Cecil Rhodes*, pp. 361 ff.; *Parl. Pap.*, Cd. 2399, 3889 (as to Natal, Acts No. 1 of 1909 and No. 29 of 1910, being the outcome of the investigations reported therein). For de Villiers' protests against the acquittal of the Kœgas murderers in 1879 (due to the carelessness of the incompetent Upington as Attorney-General), see Walker, p. 144, and his assertion of law in favour of the natives in *W. Kok v. The Queen*, 1879 Buch. 75; and Sigcau's case (1895); Walker, pp. 258 ff.

<sup>2</sup> The £25 yearly occupation franchise was raised by the *Franchise and Ballot Act*, 1892, to £75, while the very low owners' qualification, almost entirely confined to Europeans, remained; B. Williams, *Cecil Rhodes*, pp. 205 ff.

to be one for an account, in which they could place a valuation of Rs. 5, and so avoid paying full court-fee leviable under clause (1) of s. 7. Even a suit for the recovery of money, the precise amount of which could not be ascertained unless the accounts of the parties are examined has been held not to be excluded by Art. 31 of the Provincial Small Causes Courts Act." The character of a suit is determined by the cause of action and the relief actually sought and not by any side issues that the defendant may raise.

**Where the court-fee paid is deficient.**—Where the appellant while claiming the full amount sued for paid only a court-fee for a lesser amount, the whole appeal will not be dismissed but a decree will be awarded to the appellant for not more than the amount for which the fee was paid. *Firm Nihal Chand v. Sardari Mal*, 1925 Lah. 558.

## PARAGRAPH V: SUIT FOR POSSESSION OF LAND, HOUSES, GARDENS, ETC.

**Local amendments.**—The clause has been amended locally in the various provinces with a view to increase the revenue. The amendments are printed in italics in the body of the Act itself. In the United Provinces also, the value of the land coming under clause (a) is 20 times the revenue and that of the land coming under clause (b), 10 times the revenue by virtue of the United Provinces Court-Fees (Amendment) Act III of 1932 extended by Act XI of 1934.

**Principles of valuation.**—The principle underlying the methods of valuation enunciated in the various clauses of this paragraph is, as stated by Coutts Trotter, J., in *Godavarthy Sundaramma v. Mangamma*, 19 M. L. T. 266, that wherever one can calculate with certainty the amount of revenue payable on a land or plot, the value of it should be taken at a multiple of that revenue and that wherever it is not so possible to measure the revenue the value should be taken at the market value.

It is necessary to explain here preliminarily the meaning of term "estate" mentioned in them: This is given in the explanation added to the paragraph. Therein it is stated that an estate is any revenue-paying land, concerning the payment of the revenue of which a separate engagement has been executed in favour of the Government or which in the absence of such engagement is separately assessed with revenue. Thus any revenue-paying land is an estate (1) if there is a separate agreement executed to pay that revenue, (2) or where there is no such agreement, if the land is separately assessed with revenue. According to the 2nd part of the explanation therefore, a land or plot separately assessed with revenue can be an estate only if there is no engagement executed about it as regards the payment of the revenue. Therefore if a part of an estate is separately assessed, but if there is a separate agreement executed for the payment of the revenue on the estate, then the part so assessed does not become an

administrative organs, are concerned with roads, of which it maintains 3,200 miles; dipping of stock; maintenance of wattle plantations; provision of hospitals; contributions to supplement salaries of native teachers; the maintenance of two agricultural schools and three farms to inculcate improved methods of agriculture and stock breeding; and experiments in cotton culture. In Western Pondoland since 1911 there has been a General Council, with three District Councils, but the members of the former are nominated by the Paramount Chief and its functions are somewhat limited.

In the other colonies the native right to the franchise was never admitted, as regards the Transvaal and the Orange River Colony part of the condition of the final surrender of the Boers having been that the step should not be taken before representative government was accorded, while in Natal the possibility of obtaining a vote, which at first existed, was gradually so limited that only some 450 native voters exist as compared with 34,000 other electors. Inevitably the doctrine of racial inferiority—the Transvaal and Orange Free State Constitutions would tolerate no equality whether in state or church, and the union of the Dutch Reformed Church by Act No. 23 of 1911 expressly denies to natives of the Cape equality with Church members outside that province, in flagrant defiance of Christian principle—has resulted in a systematic treatment of the native as an inferior. He is subjected to a system of pass laws which are devised to keep him under strict supervision and hamper freedom of choice of work, and, though the defects of the system were recognized by the South African Native Affairs Commission of 1903–5, by a Select Committee on Native Affairs appointed by the Assembly in 1914, by a Departmental Committee appointed in 1919, whose report was only issued in 1923, and by the Native Affairs Commission established under the Act of 1920, the Native Registration and Protection Bill of 1923 was far from satisfactory, and even so was much opposed, with the result that it was withdrawn for further consideration. Exemptions from disabilities placed on natives are available in Natal under law No. 28 of 1865, passed in the days of Imperial control, under which natives male and female of advanced civilization can obtain exemption from the restrictions on natives in general. But the narrow and ungenerous policy of

under clause v (b) of the Act, and contended in appeal that the lower courts had wrongly levied stamp on the market value under cl. v (d). It was held (Berkley, J.) "The holding,  $\frac{1}{3}$  of which is claimed, not being a *definite share* in the estate, the land sued for cannot be regarded as *such a share*. The stamp has therefore been correctly calculated in the courts below upon the market value of the land. *There is no provision in the Court-fees Act for the value of a fractional part of a holding recorded in the Collector's Register as separately assessed with land revenue*, being calculated on the land revenue, and the market value must therefore be taken under cl. v (d)." (The italics are made now). This was followed in *Mst. Jian v. Mst. Nadir Nishan*, (1883) Punjab Record 6. It would appear that as a result of these rulings as will be shown presently the Notification was issued by the Government of India that a suit for possession of a "fractional share" of a separately assessed part of an estate assessed with revenue under a temporary settlement need be valued only at 5 times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share. This is now item 18 in the consolidated Notification issued later in 1889. It would be seen from the Punjab decision quoted above that "definite share" and "fractional share" are used there as convertible terms. The gist of the decision there was that the holding (separately assessed part)  $\frac{1}{3}$  share of which was sued for, not being itself a definite share of the whole estate of which it formed a part, the  $\frac{1}{3}$  of it sued for could not be a definite share of that whole so as to render the 1st half of clause v (b)—relating to definite share of an estate—applicable, that though the  $\frac{1}{3}$  was a definite or fractional share of the holding or assessed part, there was no provision in it, *i. e.*, for a definite share of a part, in the 2nd half of cl. v (b) corresponding to the similar provision in the 1st half about definite share of the whole estate, and that therefore the  $\frac{1}{3}$  of the part had to be valued at the market value under cl. v (d). The word "fractional" in the Notification, and indeed the whole language of it appear to have been taken from the last sentence in the decision. The affinity between the two is tell-tale. It is thus evident that it was in consequence of the decision and in order to rectify the omission in the 2nd half of the clause that the Notification was issued. The Notification thus adds a provision for a definite share of a part corresponding to the provision in the Act itself for a definite share of the whole.

The United Provinces and the Behar and Orissa Governments have after the Devolution Act of 1920 withdrawn the above Notification, and the result is that the above Punjab decision has now become applicable again in those provinces. Hence it was held in the recent decision *Haliman v. Media*, 55 All. 531 referred to above that a suit for possession of a fractional share of a separately assessed part of a temporarily settled Zamindary had to be valued under cl. v (d) at the market value. It may be noted that in this decision also "definite share" and "fractional share" are used as meaning the

Botha's attacks on the German forces in East Africa. In 1913 the land question was taken up, native land tenure being in a condition of the utmost confusion, natives living sometimes on tribal lands—of which vast areas in Natal and Zululand were held by trusts whose powers, under Act No. 1 of 1912, may be handed over by the Governor-General in Council to the Minister for Native Affairs—or squatting with varying degrees of legal authority on private or Crown land, or holding on ordinary European tenure. The Orange River Colony in 1908, by Act No. 42, sought to deal with squatting, but the Imperial Government refused the assent requisite, because it was felt that the subject must be taken up by the Union. Assent, on the other hand, was readily given to the Cape Act No. 29 of 1909, providing for Boards of Management of communal reserves attached to mission stations, which superintend the affairs of these reserves. The Act No. 27 of 1913<sup>1</sup> was based on the dogma of the desirability of separating natives and Europeans as regards land tenure. As a preliminary step it scheduled a number of areas, and provided that in these native areas no person other than a native might acquire land, or an interest therein, save with the approval of the Governor-General in Council; similarly, without such approval, outside these areas no native should be able to acquire land from a non-native, and a non-native should not be able to acquire land from a native. The essential part of the Act was the provision of a Commission to report on the question what areas should be assigned for native, what for non-native occupation exclusively. The commission under Sir W. Beaumont reported in 1916, and a Native Affairs Administration Bill of 1917 was drafted to carry out the principles of the system. It was closely scrutinized by a Select Committee on Native Affairs, on whose recommendation five local commissions further investigated and reported, their reports, received in 1918, turning out to be based on diverse principles and agreeing chiefly in the determination not to give the natives any land of value beyond what they actually had. The Union Government, however, made in practice some use of these reports, for it consented to accept acquisition of lands by natives in the areas suggested for them by the Local Committees, while, on the other hand, it decided

<sup>1</sup> Cf. Keith, *Imperial Unity and the Dominions*, pp. 183 ff.

revenue to Government but it is not a definite share of such an estate and is not separately assessed to Government revenue, and therefore the court-fee has to be calculated on the market value of the land and not on ten times the revenue payable in respect of it. *Jogendra Narain Singh v. Radha Prosad Singh*, 13 Pat. L. T. 590 = 1932 Pat. 319. See also under 'Fractional Share' below.

**Subordinate tenures.**—Even where it is not the proprietary interest in the whole or a share of the estate that forms the subject matter of the suit, but a subsidiary interest as a subordinate tenure, it is held that clause (a) is the proper clause applicable. Their Lordships observe as follows in *Habibul Hussain v. Mahamad Reza*, 8 C. 892 : "If it was the intention of the legislature that where a suit is not brought by the proprietor of an entire estate, but by a subordinate tenure holder, such as mukuvaridars etc., there should be a different way of assessing the court-fee, that would have been clearly expressed in one of the clauses of the section. Referring to all the clauses it is evident that there is no separate provision for a suit by a subordinate tenure holder. Therefore it is clear such a case comes within sub-section (a) of clause v of s. 7". This principle was also extended to a share of a subordinate tenure. It was held "immaterial who paid the revenue to Government. The fractional share of the subject-matter (the under tenure) is certainly a definite share of the estate as a whole which pays annual revenue to Government." *Swaminath v. Jang Bahadur*, 58 I. C. 132. But see *Bibi Kulsum v. Muhammad Hamid*, 45 I. C. 928.

**Estate.**—This is defined in the Explanation to the section. This includes the cases where the raiyats pay the amount directly to Government, or to an assignee of such revenue.

**Paying annual revenue to Government.**—This includes payment of assessed revenue not necessarily to the Government direct but also payment to an assignee from Government, such as a Jagirdar.

**Permanently settled estates.**—There are estates in respect of which the revenue payable was settled once and for all. See Bengal Regulation II of 1793 and Madras Regulation XXV of 1802. They generally comprise Zamindaris and go by the several names of Jagirs, Mittas, etc.

**Temporary settlements.**—The majority of lands in the Madras Presidency, where the Ryotwari tenure prevails and also the Sir lands in the United Provinces are all instances of temporarily settled estates. Here the assessment is subject to periodical revision; at present it is revised every 30 years in the Presidency of Madras. During that period it is of course a permanent assessment till the next settlement.

**"Collector's Registers."**—The expression "Collector's Registers" in s. 7 v (b) refer to the register in which the land revenue

contented itself in 1920 with passing a *Native Affairs Act*, No. 23. The Act creates a Commission of not less than three nor more than five members, meeting under the Minister for Native Affairs, which considers any matter relating to the general administration of native affairs or legislation in so far as it affects the native population, other than matters of departmental administration. If its views are rejected by the Minister, it can insist on a decision by the Governor-General in Council, and in the last resort may insist on the papers being laid before Parliament. The device, borrowed from the scheme scheduled in the *South Africa Act* for the Government of other native territories which may be transferred to the Union, is intended to secure permanence and continuity in native policy. The Commissioners also are permitted to be members of Parliament, though paid, and thus to influence the Legislature. The Act further authorized the creation of local councils for native areas, with powers as to roads; drains, dams, furrows, water supply; eradication of stock diseases; destruction of weeds; sanitation; hospitals; methods of agriculture; and educational facilities, with power to raise rates; such councils to have an official chairman. Further, authority was given for convening formal meetings of native chiefs, members of native or local councils, or other leading natives, to discuss matters of importance to the natives, thus reviving the provisions above cited of the Transvaal and Orange River Colony constitutions. In this case action was taken on the power; a Conference attended by the Native Affairs Commission was held in September, 1922, to discuss the Natives (Urban Areas) Bill; another in 1923 to consider the Native Marriage Bill and the Native Registration and Protection Bill, while one in 1924 led up to the enactment next year of a comprehensive measure on native taxation. The goodwill of the Commission to the natives, its desire to help them, and to induce public feeling in the Union to realize its elementary duties to the natives, are beyond question.

The chief fruit of the efforts of the Commission are contained in the *Natives (Urban Areas) Act*, 1923, which is a serious effort to deal with the problem of affording natives in urban areas proper protection and security, the older legislation having been vitiated by the fact that, especially in the Orange Free State, it was mainly directed to depressing the status of the natives,

**Révenue free lands.**—This clause applies to lands not paying revenue. They pay either no assessment or are burdened only with a nominal payment. A manyam is land held either at a low assessment or altogether free in consideration of services done to the State or the community. They are of different kinds as Sarvamanyam, Sudda Inam, Ardhmanyam, Chaturbagam, Mukhasa, Dufter inams, Tope inams, Brahmadayam, Agraharam, Srotriyam, Poruppu, Jagir, etc. In these cases it is clear that the assessment could not serve as any safe basis for the valuation of the property. Hence it is that the value is directed to be computed on the annual income thereof. *Maung v. Kumara*, 50 I. C. 5.

**Fluctuating assessment.**—This clause is held applicable to suits for the recovery of possession of lands subject to fluctuating assessment. *Mohan v. Bahadur*, 50 I. C. 142.

### Valuation.

(1) In the cases where there have been profits from the land, and where the computation has to be made under this clause the value of the land is taken to be 15 times the nett profits that have arisen from the lands during the year next before the date of presenting of the plaint. *Gasi Ram v. Har Govida*, 28 A. 411. Calculation of profits which have arisen during the fasli year next before the date of presenting the plaint instead of the calendar year, has been held to be correct. *Chandra Shekhar v. Thakurji Maharaj*, 1935 A. L. J. 548=1935 All. 642.

(2) In cases where no such nett profits have arisen, then the value is the amount at which the court shall estimate the land with reference to the value of similar land in the neighbourhood. The value herein stated cannot be construed to mean "the value of profit." That would result in importing into the natural meaning of the word 'value' a limitation for which there seems to be hardly a necessity. It is submitted that the market-value of the land is what is meant. This will result in no disparity either. In the first clause the valuation is taken to be 15 times the nett annual profits. It is a rough and ready estimate of the value of the land 'at 15 years' purchase'. If that data of annual income is not available, the courts are authorised to estimate the value of the property by reference to the value of the adjacent properties.

'Similar land'—It was held in *Maung Meik v. U. Kumara*, 60 I. C. 5, that the mere fact that the land is "religious land" does not render it incapable of valuation with reference to the value of similar land in the neighbourhood. The word "similar" has no reference to the ownership of the lands but only to the intrinsic value of the land.

(3) A question of some nicety would arise where a land is partly cultivated in which case the income should be taken in the case of the cultivated part and the market-value in respect of the balance.



In February 1925 the new Government introduced a measure which definitely by name sought to differentiate against natives and Asiatics by shutting them out from a long list of appointments where skill was needed, and this despite the fact established by the governmental Mining Regulations Commission of 1924-5, that many of the so-called skilled miners were merely men with blasting certificates, who had learned what they knew from native subordinates. The Bill was attacked by General Smuts as making for the first time statutory a colour bar forbidding the natives to acquire skill ; as extending to the Cape and Natal a disability never known before in either ; as a challenge to ' black Africa and yellow Asia ' by its nominatim attacks. The case for the Bill rested on the new policy of segregation ; Europeans could not compete successfully with natives, nor, if there was not separation, could work be found for unskilled Europeans, whom the new Government was employing at thrice the cost of natives on the railways ; in its logical form the proposal was that natives should be confined to reserves and forbidden to work for Europeans, while the poor Europeans should be set to do the work in towns and farms which natives used to do. In this form something might be said for the proposal, as it was said by Colonel Cresswell in 1920 before he undertook ministerial responsibility. But the Government admitted that it did not propose to treat as natives the coloured population, including both Cape Malays<sup>1</sup> and the Creoles of Mauritius, thus abandoning the strictness of the colour ban, and rendering it illogical. Further, the Government did not face the necessity of undertaking to secure adequate lands for the natives, and it was notorious that no Union Parliament would in fact provide sufficient lands, nor was it really seriously minded to dispense with all native help. The plan suggested, therefore, merely assumed the form of a method of keeping the natives in a permanently inferior position, and of extending to the Cape and Natal the Boer doctrine of the irreducible distinction between native and European, though unkind critics have frequently remarked on the obviously considerable admixture of native blood in men who claim to belong

<sup>1</sup> Descendants of slaves from Java introduced under the Dutch East Indies Co. For their special treatment see the *Asiatics (Cape Malay) Amendment Act*, No. 12 of 1924, differentiating these Asiatics.

Suit by a ryot against another for possession of land forming part of a permanently settled zamindari land falls under clause (d). *Kandaswami v. Subbai*, 77 I. C. 781=46 M. L. J. 345=1924 Mad. 646. But the decision to the contrary by a Bench of the Madras High Court (Ramesam and Cornish, JJ.) in *Subramania Ayyar v. Rama Ayyar*, 1927 Mad. 1002 calls for some comment here.

It was there held the notification regarding fractional share referred to *supra* applied to a suit for some specific plots in certain *ryotwari* (temporarily-settled) survey numbers, that the plots were fractional shares, and that therefore the suit need not be valued under cl. v (d) at the market value but need be valued only on the revenue proportionate to the area of the plots. All the above decisions were dissented from as having been vitiated by the fact that they did not consider the notification and being therefore of no value.

The suit related to several items which were not separately assessed to revenue. They were all portions of survey numbers which were assessed with revenue. It was contended that the plaintiff should pay court-fee on the market value and not on the proportionate part of five times the assessment of the whole survey number. The plaintiff relied on Notification No. 4650 dated the 10th September 1889 of the Government of India. Regarding the question their Lordships observed as follows: "The Government of India Notification has now been superseded and re-enacted by Notification No. 358 dated the 10th September 1921. Under this notification "When a *part* of an estate paying annual revenue to the Government under a settlement which is not permanent, is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of a *fractional* share of that part shall for the purposes of the computation of the amount of the fee chargeable in the suit be deemed not to exceed five times such portion of the revenue." This notification was the subject of consideration in *Reference under the Court-Fees Act of 1870*, s. 5, 16 All. 493, which was a decision of a single judge. It was there held that a *fractional share* under this notification covers only a case where the plaintiff claims a certain fraction of a survey number but not where he claims a certain definite area, within the survey number; for instance if the plaintiff claims  $\frac{1}{2}$  or  $\frac{1}{3}$  or  $\frac{1}{4}$  share assessed with revenue, the notification applies, but where he claims 3 acres 70 cents out of a survey number whose extent is 7 acres and 30 cents, the notification does not apply though 3 acres 70 cents is  $\frac{37}{73}$  of 7 acres 30 cents". Their lordships then refer to the judgment of Coutts-Trotter, J., in *Godavarthy Sundaramma v. Mangamma*, 47 I.C.543=34 M.L.J.558, where the learned Judge agreeing with the view of Burkitt, J., in the Allahabad decision (16 A. 493) regretted the conclusion which resulted in an anomaly. That decision of Coutts-Trotter, J., is explained away on the ground that the Notification above referred to was perhaps not considered by the learned Judge. The

the Cape franchise, and that there appears no moral justification whatever for assisting the policy of the pact Government.<sup>1</sup>

The policy of the Union is of special interest, because of the repercussion on Rhodesia,<sup>2</sup> where the Government in 1926 announced that it desired to secure from the Imperial Government intimation of willingness to consider the policy of depriving the native of the right, secured to him by s. 43 of the Constitution, to obtain land on the same terms as a European. It is clear that the policy of segregation of the natives in chosen areas has general approval, but it is pleasant to note that Mr. Hadfield, in advocating it, stated on 3 May 1926 that the areas set aside for the natives must be adequate, and that within them there must be a deliberately chosen, carefully devised, and steadily pursued process of education and development. It is at least clear that, if segregation is ever to be justified or successful, it must be based on elementary justice.

The Imperial Government is inevitably interested in the progress of affairs in the Union, because it has the responsibility of deciding whether it shall hand over control of Bechuanaland, Swaziland, and Basutoland to the Union. If the policy of the Union is dictated merely by regard for European interests, surrender of these territories, which would be wholly against the will of the people, would be a discreditable breach of faith, for there is no doubt that the territories accepted direct rule of the Crown<sup>3</sup> and would never consent to transfer to the control of the Union Ministry. The elaborate schedule to the *South Africa Act* is sufficient proof of the distrust of the Union Government felt by the Imperial Government in 1909, for it prescribes rules which are intended to secure just government. The plan is that of a permanent Commission of not less than three members to advise the Prime Minister, with the right of appeal

<sup>1</sup> The modern practice of permitting exploitation of the natives of Kenya (see Norman Leys, *Kenya*) exhibits an Imperial attitude in painful contrast with that of Mr. J. Chamberlain, who was ready to protect the natives against Mr. Rhodes (B. Williams, *Rhodes*, p. 259).

<sup>2</sup> For the pre-responsible government history see *Parl. Pap.*, Cd. 8674 (1917); Cmd. 547 (1920); Egerton, *British Colonial Policy in the XXth Century*, pp. 181 ff.

<sup>3</sup> Compare the case of the Indian Princes whose relations are with the Crown, and who cannot properly be handed over to the control of the Indian Legislature save by consent.

*share* is not covered by "fractional share" and that there is some difference between a specific *share* and a definite share. I am unable to agree with Burkitt, J., and Tudball, J., in the Allahabad cases."

This decision is quoted at length for it runs counter to the previous judgments of that court and that of the Allahabad and other High Courts and deals with quite a common type of suits. It is therefore expedient to examine the grounds on which the learned judges chose to come to a different conclusion. Their Lordships dissent from the previous decisions on the ground that these ignored the Notification :

"The decisions in which the notification has not been considered are of no value." Admittedly the notification (Government of India Notification whose wording is the same) was considered in 16 A. 493, which decision was considered and approved by Coutts Trotter, J., in 8 L. W. 88 = 34 M. L. J. 558. There was no necessity for Krishnan, J., in 1924 Mad. 646 where the suit was for recovery of possession of specific plots in a permanently settled land, to refer to this notification. His Lordship there referred to these decisions about temporarily settled land only to show that specific plots whether in permanently settled land or temporarily settled land have to be valued under cl. (d), according to the market-value. So far about Madras. In Allahabad, the decision in 16 A. 493 was referred to and approved in 33 A. 630 by Tudball, J. Though it may be in some of the decisions there is no specific reference to the notification still as the decision in 16 A. 493 was referred to and followed, and as that decision in 16 A. 493 is one which has discussed the notification it can be safely presumed that the learned judges who were parties to these several decisions were aware of and did consider the notification.

There was, however, no necessity for the application of the notification in them, because according to them specific plots in a property are not definite or fractional shares of it and cl. v (d) of the Act itself therefore applied. According to them the notification is meant for a different purpose as stated in the paragraph headed *Notification—origin of, supra*.

It is submitted that there is a fundamental mistake in the decision and that is that there is a confusion about "specific plot" and "definite share." According to it, both expressions mean the same thing. But all the other decisions take them to mean different things and lay down that a specific plot in a property cannot be said to be any definite *share* of the property merely by comparing the area of the plot with the whole area of the property, because there are other factors such as fertility, etc., besides mere area which have to be taken into consideration in deciding what share or fraction the plot is of the property. Coutts Trotter, J., says in 34 M. L. J. 558: "It is urged that even if a plot is not a part of an estate separately assessed with revenue, nevertheless it may be regarded as a definite share of an estate. It entirely ignores the word 'definite' because every share in an estate is in some sense a definite share, and I have no doubt that what

## IV

# THE IMMIGRATION AND TREATMENT OF COLOURED RACES

### § 1. *Chinese Immigration*

OF the many complex issues presented by the question of the immigration and treatment of Asiatic races in the Dominions the least complex is that of Chinese. This arises from no vital distinction in the character of the problem, but because Chinese subjects have never had any treaty rights of landing on British territory, neither the treaty of Nankin of 1842, nor that of Peking in 1860 conceding such a right,<sup>1</sup> and China has never possessed sufficient power to compel respect to be paid to her dignity.

The first series of anti-Chinese measures began with the gold rush in Victoria in 1854. In 1855 Victoria started a type of legislation (No. 39) which was often copied, the imposition of a limitation of Chinese admissible to one per ten tons of the ship by which he came, and the levying of a poll tax of £10. This was repealed in 1865 (No. 259) when the emergency was over; South Australia, which had been used after 1855 as a route to Victoria, legislated in 1857 (No. 3), but withdrew the Act in 1861 (No. 14). New South Wales, on the other hand, legislated then in Act No. 3, but this also was repealed in 1867 (No. 8). Queensland began in 1876, by seeking to exact heavier mining and trading taxes from Chinese; this was reserved and not assented to, but it was allowed in 1877 (No. 8) to impose £10 poll tax, and in 1878 (No. 8) to forbid Asiatics or Africans to work on a goldfield for three years after proclamation, unless they were the finders. The return of Chinese was also promoted by refunding the entrance money if they went back within three years. In 1880-1 a Conference of the Colonies at Melbourne resulted in decisions to take further steps; there had appeared a considerable number of Chinese in the north-east; there was jealousy of competition and fear of smallpox and leprosy; while a large influx might be expected because the United States had closed the Pacific coast to Chinese. It is probable indeed that some 40,000 Chinese were then in Australia, the

<sup>1</sup> See *Parl. Pap.*, C. 5374; *contra*, C. 5448, p. 57.

conceded that the notification was intended to make a similar provision in the second half of cl. (b) about definite share of a part corresponding to the provision in its first part about "definite share" of the whole, logic would require that the expressions used in the notification would be fitting to the occasion and mean just the thing intended and not anything wider or narrower. But according to the interpretation 'fractional share' in the notification is wider in meaning than 'definite share' in the Act. This is unnatural, and as stated above, gives rise to a great anomaly. No explanation has been given in the decision for this difference in meaning between the two expressions. The logical and natural conclusion in the circumstances can only be that the two expressions mean the same thing.

(ii) The decision affects cl. v (a) also about permanently settled land. As definite share is made to mean a specific plot, it comes about that there is no provision in cl. v. (a) for an "indefinite share" (i.e., "indefinite" according to the meaning given to the expression by the decision), that is to say, for an undivided share like  $\frac{1}{2}$ ,  $\frac{3}{4}$ , etc., of permanently settled estates. This would mean that suits for such shares of permanently settled estates which are generally big and extensive estates like Zamindaries have to be valued not on the proportionate revenue but under cl. (d) at the market-value which could never be contended to be the proper basis of valuation.

(iii) As a specific plot in a part of an estate is necessarily also a specific plot in the whole estate, it is a "definite share" (specific plot) of the whole. Now the first portion itself of cl. (b) provides for a definite share of the whole, and it therefore comes about that there was no necessity for the issue of a special notification for the purpose. Thus starting from the proposition that "specific plot" and "definite share" are synonymous and that the notification was issued to fill up the lacuna in cl. (b) as regards the valuation of a specific plot in a part of the estate, then there is no necessity for the notification.

(iv) There is difficulty in the practical application of the decision. The decision says that a specific plot in a property can always be expressed in terms of a fraction of it. This is not correct. A specific demarcated plot, say, of 1 acre in a land of 3 acres is not always equivalent to  $\frac{1}{3}$  of the land. There are other considerations besides mere area which go to determine what fraction the plot is of the whole land. The plot may be near a river or irrigation channel and therefore be the most fertile and valuable portion, and the rest of it may be valueless part, and the revenue assessed on such land would be assessed chiefly with reference to the valuable portion, in which case the plot would be far more than  $\frac{1}{3}$  of the land. Or the plot may be sandy or shady or rocky and therefore the least fertile and the most valueless portion of the land, in which case it will not be equal to but would be far less than  $\frac{1}{3}$  of the land. The assumption that every part of the land would be equally fertile and valuable is not correct. It cannot therefore be predicated what fraction the plot is of the whole

Act of 1884; in 1893, having attained self-government, she adopted the policy of the other Colonies, but in 1897 (No. 27) admitted indentured Chinese to north of 27° S. lat. Queensland legislated in 1888, but as the Bill went beyond the other Colonies it was only allowed in 1889 (No. 22) on promise of amendment carried out in 1890 (No. 29) but not very satisfactorily. The feeling which had hitherto been mainly concerned with avoiding evil results from the congregation of natives, had gradually hardened into one of determination to keep Australia 'white', and the advent of the Commonwealth was marked in 1901 by the adoption in the *Immigration Restriction Act* of the dictation test, which requires any immigrant on demand to write a passage of fifty words in a European language chosen for him; in fact it can be made a courteous mode of complete exclusion. The enforcement of this rule is facilitated by the imposition on the captains of ships entering Australian harbours of a fine of £100 for each Chinese who succeeds in entering Australia illegally. The population is steadily diminishing; in 1921 it stood at but 17,157, with 3,655 half-castes. They are liable, of course, to all disabilities incumbent on Asiatics generally, such as exclusion from the sugar and banana industries in Queensland, but they are also the special subjects of attention in Western Australian and other Factory Acts, which are aimed at the competition of Chinese laundries.

New Zealand in 1896, as a result of the slight increase in arrival over departures, increased the poll tax to £100 and limited entry to one per 200 tons burden. In 1907 this was found inadequate, and an Act (No. 79) required any would-be Chinese immigrant to read 100 words of English; modifications were made in 1908 (No. 230) and 1910 (No. 16), but the principle was maintained, and an appeal from the Chinese of the Dominion to the Secretary of State was necessarily answered by insistence that the matter was one for the local Government.<sup>1</sup> In 1910 an Act (No. 67) regarding factories was in fact, but not in form, aimed at Chinese laundries. In 1920 finally the *Immigration Restriction Amendment Act* adopted the principle of permitting the entry of none save British subjects by birth without permits, while for this purpose naturalized British subjects and natives of British

<sup>1</sup> *Parl. Pap.*, 1908, A. 1, pp. 15, 19; 1909, A. 2, p. 7; *Parl. Deb.*, 1907, cxlii. 838 ff., 923 ff., 961 ff.

Northern India there are temporarily settled zamindaries.) The second part of the explanation says that "in the absence of such agreement" any land separately assessed is an estate. Hence, there being no such engagement about ordinary ryotwari land in Madras any such land or part of it separately assessed is an estate. In Madras therefore there is no such thing as a *part* (of ryotwari land) which is separately assessed and which is not an estate. When any part of a ryotwari land is separately assessed there is no engagement executed, but patta is issued for the part and the pattadar pays revenue to the Government, and the part becomes an estate.

The decision applies the notification to specific plot (definite fractional share according to it) in a survey number, but it does not indicate of what estate this survey number is a part. The existence of the explanation seems to have been overlooked by it, though it says that the previous decisions have ignored the notification. In other provinces, though a part of a temporarily settled zamindary may be recorded as separately assessed, it cannot become an estate according to the explanation, because there is an agreement executed by the zamindar as regards the payment of the revenue of the zamindary. It would appear that the revenue payable for these temporarily-settled zamindaries is distributed by the settlement officer over its component parts (thoks, pattis, or khewat khatas as they are called there) and each part recorded in the Register as separately assessed. In the United Provinces this is regulated by s. 67-A of the U. P. Land Revenue Act and Board's Circular. See *Haliman v. Media*, 55 All. 531. This distribution and separate recording of assessment over each part is done probably to facilitate revision of assessment at the time of the periodical re-settlement. In Madras as soon as a part of a ryotwari or temporarily settled land is assessed with revenue, it becomes an estate by itself and the provision in the second part of cl. v (b) for the valuation of separately assessed part of an estate appears to be redundant in the light of the explanation, as the provision in its first part for the valuation of an estate will cover such a case also. The second part of cl. v (b) and the notification can therefore, it is submitted, apply only in provinces where there are temporarily settled zamindaries. In the Punjab and in the United Provinces and possibly also in some other Provinces in the north there are such zamindaries. The history of the notification also shows that it arose from the Punjab decisions. It is not a violent presumption to hold that the notification has been simply re-issued in Madras after the Devolution Act and has no practical significance there.

Even if the notification should be thought to apply to conditions in the Madras Presidency, its interpretation in the decision conflicts with the earlier Madras rulings and with the rulings earlier and later of all the other High Courts and cannot be sustained. The interpretation of "fractional share" in the notification as wider in meaning than "definite share" in the Act, so as to include what is called an "indefinite fractional share" as well as a definite fractional share, and of



Columbia, as has been seen, there have been conflicting decisions as to the right of the Chinese to earn a living as compared with the legislative power of the province over its own property, while Saskatchewan has successfully prohibited the employment of white women by Chinese.

In the Transvaal under Lord Milner's influence a system of importation of Chinese labourers under semi-servile conditions<sup>1</sup> ended in the defeat of the Government of Mr. Balfour which was responsible for sanctioning it, and the responsible government of the Transvaal hastily furthered its termination. The step was taken in face of the strong dislike of the Australian Commonwealth, New Zealand, and the Cape, which legislated in 1904 (No. 37) and 1906 (No. 15) against further Chinese immigration, save as regards British subjects, and Newfoundland in 1906 (c. 2) and 1907 (c. 14) expressed its solidarity of sentiment by similar legislation. The treatment of the Chinese, while detained as prisoners in locations, unfortunately remains as a standing source of discredit to both the local and Imperial Governments, and in special to Mr. A. Lyttelton. The policy was the more inexcusable as no local or Imperial interest could be said to be served by the quicker exhaustion of the gold on the Rand, but at this time policy in South Africa was fatally influenced by financial houses.

## § 2. *British Indian and Japanese Immigration into Australasia*

The rules which have been applied to Chinese, and which may in due course require revision, if the potential power of that country is ever consolidated, could not be applied either to British Indians, because the Imperial Government recognized that British nationality could not be ignored, or to Japanese, because for many years British policy aimed at, and may have again to seek, support from Japan against the Russian advance in the East. The issue<sup>2</sup> became urgent in 1896, when a

<sup>1</sup> *Parl. Pap.*, Cd. 1895, 1898, 1899, 1941, 1945, 1986, 2025, 2026, 2105, 2183 (1904); 2401 (1905); 2786, 2788, 2819, 3025; H. C. 114, 156 (1906); 3328, 3405 (1907); 3994 (1908); Walker, *Lord de Villiers*, pp. 412, 417 ff., 429.

<sup>2</sup> Reeves, *State Experiments in Australia and New Zealand*, ii. 325-64; Commonwealth *Parl. Deb.*, 1901-2, pp. 3497 ff.; *Parl. Pap.* 1901-2, Nos. 2, 33, A. 15, 18; South Australia *Parl. Pap.*, 1896, No. 38; Quick and Garran, *Const. of Commonwealth*, pp. 623 ff.

ence of the decision but I see no possible escape from that construction of the Act. I observe the same view was taken by the learned judges of the Allahabad High Court in 16 A. 493." So also in *Chandra Narayan Singh v. Asutosh De*, 41 Cal. 812 (817). "It has been ingeniously argued, however, on behalf of the plaintiff, that he should not be called upon to pay a larger amount as court-fee than what he would have had to pay if he had been the owner of all the fifty-two ghatwali mahals and sued to recover possession thereof. This contention is manifestly fallacious for two reasons, namely, *first*, that the plaintiff cannot avail himself of sub-clause (a) unless he brings his case strictly within its terms, and for that purpose the determining factor is the land in suit and not a larger property in which it may be included; and *secondly*, that even if the plaintiff had sued for recovery of all the fifty-two ghatwali mahals, the question would require careful examination whether those mahals constitute an estate paying annual revenue to Government. The contention of the plaintiff consequently fails. As regards sub-clause (b), it is plainly inapplicable for the reasons assigned for the exclusion of sub-clause (a)."

In the recent decisions *Rajwant Singh v. Mutalli*, 1930 Lah. 182 and *Jogendra Narayan Singh v. Radha Prasad Singh*, 1932 Pat. 319 it has been held that suits for specific plots must be valued under cl. (d), and in *Salamat Ali v. Nur Mahomed Khan*, 1933 Oudh 533 the learned judges have dissented from the 1927 Madras decision and preferred to follow the above Allahabad decisions.

**Market Value.**—In estimating the market value of certain ryoti land, which under the Estates Land Act, could not be converted into a building site without the consent of the landlord, the court cannot proceed to determine its value as a building site on the hypothetical assumption that the landlord would on payment of some *nazar* be willing to allow it to be so used. *Alagappa Chetty v. Saminathan Chetty*, 142 I. C. 195 = 1933 Mad. 367.

### Proviso.

1. **Madras.**—The proviso is enacted by the Madras Court-Fees Act V of 1922 in substitution for the proviso in the Act which relates of the Bombay Presidency. Section 8 of the Suits Valuation Act provides that the valuation for the purposes of the computation of court-fees and jurisdiction should be the same except in specified cases and the suits covered by s. 7 (v) are amongst the excepted cases. The valuation of land is provided for in para (v) in several ways. It is a multiple of the revenue payable to Government or the nett profits arising out of the land or the market-value thereof. In the cases of lands and gardens it is only the market-value. Provision is made in s. 3 of the Suits Valuation Act enabling the Local Government to frame rules for the valuation for jurisdiction of those classes of suits which have been excepted in s. 8 of the Act. Under s. 3, therefore the Local Government could make rules for the computation of the value of the land for the purposes of jurisdiction. Section 14 of the Madras Civil Courts

generically based on securing one type in Australia. The Act enables the Governor-General to forbid, either wholly or subject to numerical limitation, the entry of any nationality, race, or occupation if he is satisfied that such entry is rendered undesirable by reason of economic, industrial, or other conditions in the Commonwealth, or that the persons specified are unsuitable for admission, or that they are unlikely soon to be assimilated. The Act was motivated by what was deemed excessive Italian immigration and the determination of the immigrants to maintain racial separation. Assurances were given that arrangements had been made with the Government of Italy to restrict, as desired by the Commonwealth, the number of Italian immigrants. Moreover, in the same year the Commonwealth honoured her acceptance at the Imperial Conferences of 1921<sup>1</sup> and 1923<sup>2</sup> of the doctrine of the right of Indians lawfully resident in the Dominions to be treated as ordinary citizens, by passing an Act to give the Commonwealth franchise to natives of British India, being inhabitants of Australia and resident at least six months.

Unfortunately the concern of Australia did not stop at the matter of real importance, the demand for racial purity and the absence of economic competition from persons with a lower standard of life. Like all sentiments, it spread beyond its proper basis and turned into a dislike of things oriental, resting on a somewhat imaginary superiority, and thus, in the *Post and Telegraph Act*, 1901, No. 12,<sup>3</sup> the Government was forbidden to enter into any mail contract with ships not manned with white labour. This necessarily terminated the connexion of the British and Australian Governments in the arrangements for the service, for, as Mr. Chamberlain<sup>4</sup> in a specially effective dispatch of 17 April 1903 pointed out, the differentiation was purely racial, referring as it did to a service to be carried out largely in tropical or subtropical waters; it had been for many years in operation, and the Crown, by the Mutiny Proclamation of 1858, had declared itself bound to the natives of its Indian

<sup>1</sup> *Parl. Pap.*, Cmd. 1474.

<sup>2</sup> *Ibid.*, Cmd. 1987.

<sup>3</sup> *Parl. Pap.*, Cd. 1639, pp. 4, 5; Commonwealth *Parl. Pap.*, 1903, Nos. 21, 40.

<sup>4</sup> No subsequent Secretary of State save Lord Crewe showed any sincere interest in the Indian claims, and Lord Crewe lacked the force and character of Mr. Chamberlain.

**2. Bombay.**—While the Madras Proviso enacts that the valuation fixed for purposes of jurisdiction is to govern the value for court-fees also, the proviso relating to Bombay directly fixes the court-fee. Of course s. 7 clause (v) being one of the excepted cases under s. 8 of the Suits Valuation Act, the value for court-fees and jurisdiction under this proviso in Bombay could not be the same. It covers all classes of Revenue paying lands in the Bombay Presidency. Land may be held on (I) (a) permanent settlement, (b) settlement for any period exceeding 30 years and (c) settlement for any period not exceeding 30 years and full assessment is paid to Government or (II) (d) where a part of the annual survey assessment may have been remitted.

In cases (a) and (b) the value of the land is fixed at 15 times the survey assessment. In case (c) the value is fixed at  $7\frac{1}{2}$  times the survey assessment. In case (d) the value is computed under (a), (b) and (c) as the case may be irrespective of the whole or part remission and to it is added a sum equal to 15 times the assessment or the portion of the assessment so remitted.

**Scope.**—The scope of this proviso has been admirably discussed by West, J., in *Ala Chela v. Oghadhai*, 11 Bom. 541 F.B. His lordship rightly comments on the "so called" proviso "improperly called" as such. The reason is that while this proviso is added as an appendage to clause (d) of paragraph (v) of s. 7, it is really much more comprehensive than the limited scope of clause (d) to which it refers: "It seems clear that it was intended to provide a standard of valuation in the Bombay Presidency not only for the comparatively rare cases of land forming part but not a definite share of an estate paying revenue to Government but for all cases of suit for land. It provides rules for all the cases enumerated in the preceding clauses (a), (b) and (c) of paragraph (v) of s. 7 and is manifestly intended to cover all the cases based on the particular circumstances of the Bombay Presidency".

**Proviso—Paragraph 3.**—There is an obvious lacuna in the drafting of the proviso for no provision is made for the possible case of "lands in the Bombay Presidency that have not been submitted in any way to survey assessment. Because the survey extended over almost all the area, it has been assumed to extend over the whole of it." That this was an unwarranted assumption was demonstrated in the above quoted Full Bench decision of the Bombay High Court 11 B. 541. It was observed that this assumption must create a difficulty wherever there has in fact been no survey and no assessment but that it need not create a difficulty where there has been a survey and assessment even though the amount computed under this process as the rate or amount theoretically leviable as land revenue be not in fact exacted by the Government. The primary sense of assessment is the imposition on the land of such and such a tax; its second intention is the tax itself and then there is in the section a transition from the one sense to the other. Where the proprietor of the Talukdhari village had agreed

appears when the dictation test is applied to fitness for work in a margarine factory. In 1912-13 by arrangements made between the Commonwealth and Queensland the participation of Asiatics in the sugar industry, which is highly subsidized in effect by the Commonwealth, was excluded.<sup>1</sup> Similarly the *Banana Industry Preservation Act*, 1921, No. 3, is designed to prevent Asiatics having any share in it. As regards the pearl shelling industry which is carried on in Queensland, Western Australia, and Northern Territory waters largely by Japanese, it was proposed at one time to oust them and substitute white labour, but the Commission of 1912 in its final report in 1916 quite frankly admitted that the retention of the Japanese would do no harm to the general policy of exclusion and that it was not wise to persist in the plan of granting no further licences to allow the admission of the Japanese.

Of the other States Western Australia has been most energetic in anti-Asiatic measures ; thus the *Factories Act*, 1904, No. 22,<sup>2</sup> the *Mining Act*, 1904, and the *Early Closing Act Amendment Act*, 1904, all contained discriminations by name which elicited some comment from the Imperial Government, but without producing more than abuse of that Government in the Assembly. Act No. 27 of 1907 deprived Asiatics of the Assembly franchise, which had been exercised on a freehold qualification. In 1909, however, the Upper House declined to pass a Fisheries Bill which penalized Asiatics, and in 1910, when a Bill to prohibit marriages between Europeans and Asiatics was produced, feeling was not in favour of it, and it was allowed to drop. The *Factories and Shops Act*, 1920, No. 44, which is largely a re-enactment of old measures, shows the nature of the treatment meted out to Asiatics ; a factory ordinarily requires four or more workers to fall under regulation, but a less number is sufficient if they be Asiatics ; no Asiatic can be registered as owner or occupier, unless he carried on the business there before 1 November 1903, nor be employed there save under the same condition ; no Asiatic can work longer hours than a woman, or before 8 a.m. or after 5 p.m. All

<sup>1</sup> Queensland Act No. 4 of 1913 ; Commonwealth Nos. 25 and 26 of 1912 ; *Parl. Pap.*, Cd. 6863, p. 113 ; *Baird v. Magripilis*, 37 C. L. R. 321.

<sup>2</sup> A proposal to amend elicited violent attacks on the British Government ; *Parl. Deb.*, xxvii. 98 ff.

and it was held that the conversion of an assessed arable field into a cocoanut tope did not affect the application of clause v (b) of s. 7. On the other hand in a case reported in 146 P. R. 1908, it was held that the term 'garden' in s. 7 v (e) included a fruit garden, even though the land under it might have been assessed to land revenue and that the value should be assessed at the market value. 71 P. R. 1914 is another decision of a Division Bench that puts forth the same view."

**Paramba Land in Malabar District.**—The case of parambas in the Malabar District falls both ways. If the trees are assessed to tax then the land is treated as a garden but if they are not assessed then the land is assessed under clause (c). *Andathodanv. Pullamboth*, 12 M. 301 F.B. The nature of paramba lands in the Malabar district was discussed in this case where it was observed as follows: "If a Paramba contains no cocoanut, areca, or jack trees no assessment is charged. In fact in Malabar a tree tax is substituted for the land assessment and whether or not a paramba is assessed depends upon the nature of the trees grown therein. It is therefore evident that paramba should either be classed as lands paying no revenue or as gardens. The fee is to be computed under clause (c) or (e) according to the circumstances of each case." See also *Kullappa v. Abdul Rahim*, 40 M. 824, where the meaning of word 'garden' was considered. In that case one of the survey numbers was described as a "cocoanut tope." There were number of cocoanut trees growing close together, and the defendants contended that such field or fields must be regarded as constituting a garden within the meaning of clause v (e). Their Lordships observed thus "We do not know over how many fields the 'tope' extended or how thickly together they grew. I do not consider such information necessary to a decision, and may remark that it would be most inconvenient to make the proper principle of valuation of a suit for purposes of jurisdiction dependent on such an uncertain factor as the comparative density of the trees \* \* \* As pointed out by a Full Bench of this court in *Andathodan Moidin v. Pullamboth Mamaly*, there is much significance in the juxtaposition of the words "house or garden" in the clause; and it should be taken as referring primarily to a garden in the English sense, viz., ornamental or pleasure or vegetable. If a holder of a land raised a crop of paddy or ragi there can be no question that it would be valued under clause v (b) of the Act. Does the fact that cocoanut trees are raised instead make any difference?" The decisions in *Venkayya v. Ramaswami*, 22 M. 39 and *Murugesu Chetti v. Chinnathambi*, 24 M. 421, were quoted with approval. It may be noted that now paramba lands are assessed to revenue.

**Garden and houses.**—A suit for possession of a piece of land covered by a garden with two houses must for the purposes of court-fee be valued according to the market-value even though it is assessed to a Government jama. *Must. Bhag Bhair v. Javahir Singh*, 25 L.C. 545.

*Act*, 1920, No. 23, which allowed free entry to European British subjects, but in every other case required application in writing from the place of abode of any person desiring to become a permanent settler, as opposed to a mere temporary visitor for business, health, or pleasure purposes. The Act is frankly discourteous to Asiatics, but nothing short seems to have been possible in view of the highly excitable condition of local feeling.<sup>1</sup>

The effect on the Commonwealth and the Dominion of the resolutions of the Imperial Conferences of 1921 and 1923 in favour of the removal of restrictions from Indians lawfully domiciled in the Dominions has been seen, as noted, in the case of the Commonwealth franchise ;<sup>2</sup> it remains to be seen how much effect it will have in the States and in New Zealand.

### § 3. *British Indians and Japanese in Canada*

The centre of trouble in Canada has been British Columbia.<sup>3</sup> In 1897 it passed an anti-Japanese Bill, which was reserved and never assented to. In 1898 it inserted in a number of private Acts clauses forbidding the employment of Japanese or Chinese under a fine of four dollars per head per day, and its *Labour Regulation Act* (c. 28) and *Tramway Incorporation Act* (c. 44) were deliberately aimed at the Japanese. On the protest of the Japanese Government the Imperial Government asked for, and attained, the disallowance of the two public Acts on the score, not that it desired to secure Japanese immigration, but that *nominatim* discrimination was improper. In 1899 were disallowed a *Liquor Licences Act* (c. 39) and *Coal Mines Regulation Act* (c. 46), which attacked Japanese and the first Indians also. In 1900 it passed an *Immigration Act* (c. 11) on the Natal model, and a *Labour Regulation Act* (c. 14) also using a language test ; both of these were disallowed, but it was not thought necessary to disallow the *Liquor Licences*

<sup>1</sup> Keith, *War Government of the Dominions*, pp. 322 ff. The total of Indians in 1924 was 640 !

<sup>2</sup> Similarly in Aug. 1926 the *Invalid and Old Age Pensions Act*, 1908-25, and the *Maternity Allowance Act*, 1912, were amended to extend their benefits to British Indians born in India, if resident in Australia.

<sup>3</sup> *Canada Sess. Pap.*, 1900, No. 87 ; *Prov. Leg.*, 1896-8, p. 77 ; 1899-1900, pp. 104, 124 ff. ; 1901-3, pp. 80, 88 ; 1904-6, pp. 130, 137, 150.

to which they are assessed, which would be infinitely less than their real value. Now one of the fundamental principles of taxation is that and its incidence should be uniform. Judged by this test, the method of taxation provided in the clause is very defective and it is obvious that a uniform method of valuation should be prescribed as early as possible. This has been done in Bengal by Bengal Act VIII of 1935. According to the new clause substituted by that Act, all lands, buildings and gardens are to be valued at 15 times the annual nett profits, or their market value whichever is lower, except where such nett profits are not ascertainable or assessable or where there are no such profits, in which case the market value is to be taken. This is a desirable change which might well be followed.

### **Applicability of cl. v to certain specific cases —**

**Kyaung and other sanghika property (Burma).**—As these properties cannot be transferred by sale, mortgage or gift it has no market-value and the plaint should be stamped only under Art. 17 (vi) of Schedule II.

**Trust property.**—No distinction is made between a suit for possession as a beneficial owner and a suit for possession as trustee or manager of a religious endowment. Where the plaintiff alleged that he was the duly elected Mahant in the place of another and sued to recover possession of the properties attached to the Math, it was held that the case was governed by s. 7 (v) and not Sch. II, Art. 17 (vi), and that *ad valorem* court-fee was payable on the value of the properties, leaving the temple out of account as having no market-value. *Parsottamanand Giri v. Mayanand Giri*, 1932 A. L. J. 777=1932 All. 593.

Where the plaintiff brought a suit for a declaration that he was the ghatwal of the Kunjora Ghatwali and that he was improperly dismissed, for his reinstatement in the office and for recovery of possession of the ghatwali with mesne profits, it was held that the case did not fall within Art. 17 cl. (6) but under s. 7. cl. (v). *Jogendra Narain Singh v. Radha Prosad Singh*, 13 Pat. L. T. 590=1932 Pat. 319.

**Tank-bed.**—The Madras High Court has recently held that a suit by a landlord against his tenants occupying a holding under him to eject them from a tank-bed which they are alleged to have encroached upon for purposes of cultivation is governed by Art. 17-B of Sch. II as the tank-bed claimed has no market-value and s. 7 (v) has no application to the case. *Mannikkam Pillai v. Nagasami Ayyar*, 67 M. L. J. 688=152 I. C. 679=1934 Mad. 714. The reasoning does not perhaps apply to all tank-bed lands. During the dry season when the tank is not under water, the tank-bed land known as the foreshore of the tank is cultivated with dry crops and even proprietary rights are claimed over such land. In such cases it may not be correct to hold that such lands cannot have a market value.



found that that body was not prepared to adopt the position of Japan, and to take steps to limit emigration from her shores by any restrictive legislation. The Dominion Government, therefore, had to fall back on its powers and to impose, first, the requirement of possession on entry of twenty-five (later 200) dollars, and, second, the condition that any Asiatic immigrant, like others, must come from his place of origin on a through ticket purchased in advance and by a continuous journey. Finally, to avoid all difficulties it was laid down in 1913 that no skilled or unskilled labourer might enter Canada *via* British Columbia for periods which were indeed temporary but operated consecutively. In order to test the law, and to excite feeling in India, revolutionary plotters there devised the plan of hiring the *Komagata Maru* and sending her from Hong-Kong with a miscellaneous body of passengers, some acting in good faith, some certainly not. The law was enforced justly and with discretion by Canada, relying on the presence of H.M.C.S. *Rainbow*; it admitted those of Canadian domicile, and refused the others permission to land, reprovisioning the ship for her return voyage; the ugly character of the agitation in Canada itself was seen in the brutal murder in open court of Mr. Hopkinson, an agent of the Indian and Dominion Governments in an effort to promote the interests of the peaceful section of the Indians. The subsequent history of the would-be emigrants in the ship on the return to India showed them to be deliberate revolutionaries aiming at the destruction of British rule; and unquestionably the Indians in Canada suffered from their association in origin with these malcontents and malefactors. It is fair to say that indignation in India had been aroused by deliberate assertions that Mr. Rogers, one of the leading spirits of the Borden Government, had given assurances that Indians would be allowed to bring their wives and children in those cases where they had legitimately entered and had intended to send for their families, and that such assurances had been deliberately violated.<sup>1</sup> It is clear that there was some misunderstanding, and more ill faith, but some annoyance was natural at the fact that the most Canada was prepared to do was to waive the requirement of the possession of 200 dollars, if a wife could comply with the rule as to coming

<sup>1</sup> Keith, *Imperial Unity and the Dominions*, pp. 195-7.

So also a suit by reversioners to the estate of a deceased Hindu for declaration that a sale executed by the widow was null and void and praying for recovery of possession. *Tika Ram v. Saligram*, 57 I. C. 494; also a suit for recovery of possession of land after setting aside a sale in favour of defendant. *Sarju v. Sheoraj*, 94 I. C. 179.

**Valuation in partition suits.**—As to decisions bearing on the question when suits for partition of joint family property fall under this clause see commentaries under clause (iv) (b). Where a plaintiff in a partition suit was proved to have been in joint possession of the properties with the co-proprietors, it was held that the suit should be stamped under Article 17 (vi) of Schedule II and not under s. 7 (v). *Mir Hussain Khan v. Ahmad Khan*, 29 P. L. R. 322.

**Plaintiff's valuation and defendant's appeal.**—A plaintiff's estimate of the value of the property in dispute in the suit if arrived at in contravention of the provisions of the Court-Fees Act, cannot be allowed to operate to the prejudice of the defendant at any stage of the suit and the defendant can object to the valuation when it is in his interest to do so. The plaintiff instituted a suit for possession of certain land against the defendant and valued the land for purposes of court-fees according to its estimated market-value. The suit was decreed and the defendant appealed. In his appeal the defendant admitted that the value of the land stated in the plaint was correct but he paid a court-fee at a valuation corresponding to fifteen times the net profits arising from the land during the year, next before the date of presenting the plaint. It was held that the defendant was not estopped from questioning the valuation arrived at by the plaintiff and could not be compelled to pay court-fee at a higher valuation than that prescribed by s. 7 clause (v) of the Court-Fees Act. The defendant was not estopped by having had the advantage of the original suit being tried in a superior court. *Bagavanpuri v. Secretary of State*, 40 A. 398 = 100 I. C. 35.

## VI. SUITS TO ENFORCE A RIGHT OF PRE-EMPTION.

**1. Computation of the fee.**—The fee is payable according to the value of the immoveable property in respect of which the right is claimed. Paragraph (vi) should be read with paragraph (v) and the value of the property should be computed in accordance therewith. *Sunder Singh v. Dhian Singh*, 15 P. R. 1919; *Narayan Nair v. Cheria Katiri Kutty*, 45 I. C. 89 = 34 M. L. J. 397. The court-fee is to be calculated on ten times the land revenue assessed on the land and the amount of court-fee has nothing to do with the consideration of the sale. *Chandgi Ram v. Ram Sukh*, 1933 Lah. 767. In Bengal, the value is to be computed according to the market-value of the land, building or garden and not at fifteen times the net profits as provided in cl. v—See Bengal Amendment Act VII of 1935.

as to the franchise, an attitude disappointing in itself in view of his position when in opposition, but explained by the extreme weakness of his political majority. He was, however, able to give assurances of his anxiety to co-operate with the Indian Government. He had already expressed the same views to Srinivasa Sastri, when he toured in 1922 the Dominions in order to promote the carrying out of the principle of fair treatment of all lawful residents, and again on 29 June 1923, when the matter was raised in Parliament. His view was that it was contrary to the constitution that one province should be overridden by others, and this is perfectly sound, subject to the observation that provinces are regularly overridden<sup>1</sup> when it seems better to the Dominion Government to take such a step, and it may be doubted if any great harm could happen to British Columbia if a few hundreds or thousands of Indians could vote for federal elections.<sup>2</sup>

Japan with the protection of her treaty rights aided India in 1912, when Saskatchewan passed an irritating law to prevent any Oriental from employing a white woman even as a stenographer. This was replaced in 1913 by restricting the measure to Chinese, while Manitoba did not bring an Act of 1913 on the same topic into force. The numbers of Japanese entering Canada undoubtedly somewhat increased in the war period; employers wanted them for agricultural work, for domestic service, and for laundries, and in 1920 there was a distinct recrudescence of ill-feeling. Fortunately, nothing was done contrary to treaty, but the feeling of doubt was one of the factors which aided Canada to work for the merger of the alliance of 1911 in the wide policy of the Washington Treaties of 1921-2. Further, in 1924, after prolonged discussions, Japan was able to concede a point by undertaking that the number of Japanese entering under the style of domestic servants for families resident in Canada and agricultural workers would not exceed 150<sup>3</sup> a year as opposed to the former 400, though even this sensible arrangement was not sufficient in the eyes of

<sup>1</sup> Cf. Mr. King's fatal effort to coerce Alberta on the school issue in 1926 at the bidding of Quebec.

<sup>2</sup> For the bitterness of British Columbian feeling see *Canadian Annual Review*, 1922, pp. 830 ff.; 1924-5, p. 452.

<sup>3</sup> Mr. King, House of Commons, 19 March 1924.

appeal comprises both these contentions then cumulative fee is payable on both the contentions namely that pre-emption in respect of all the items of property as prayed for should have been granted and that the consideration decreed to be paid is excessive. *Abinash Chandra v. Shekar Chand*, 40 A. 353=44 I. C. 666. But if the defendant appeals against the right of the plaintiff to pre-empt or in the alternative against the inadequacy of the consideration decreed by the trial court as payable by plaintiff, then court-fee is payable on the higher of the two alternative reliefs. *Tekchand v. Tarachand*, 85 I. C. 566.

In a suit for possession by pre-emption, the defendant raised several pleas which though not pressed in the trial court were raised in the appellate court. It so happened further that as a result of these additional questions the defendants appellants had to pay a smaller court-fee than they would have had to pay if the same were restricted to the question of market-value. Their Lordships observed as follows "The plaintiff's counsel contends that the real object of the appeal is to have the value enhanced but that to avoid payment of court-fees on a larger amount, the defendants have resorted to the trick of adding grounds for dismissal of the suit which they had abandoned in the court below \* \* \* It is an anomaly of the law of court-fees that a person who appeals only against a part of a decree should have to pay more court-fee than one who also appeals against the whole of it. But a litigant is entitled to appeal against the whole of a decree though he intends to attack only a part of it." *Nadar Muhammad v. Kala Ram*, 9 Lah. 563. See also similar remarks in *Pathuma v. A. Moideen*, 1929 Mad. 929. No such difficulty can arise in Bengal, where by the amending Act VII of 1935, Court-fee is payable on the market-value of the property, with reference to which the suit is brought.

Where a suit for possession of a house by pre-emption is decreed on payment of Rs. 700, the court-fee on memorandum of appeal should be paid *ad valorem* on that amount as that is the market-value of the property, *Ram Labhaya v. Vaid Parkash*, 1934 Lah. 42+.

**9. Valuation for purposes of jurisdiction.**—Section 8 of the Suits Valuation Act, which lays down that the value for court-fee and jurisdiction is to be the same in several cases except among others suits relating to pre-emption. Consequently the valuation of such suits need not be the same for purposes of court-fee and jurisdiction. But s. 3 (1) of the Suits Valuation Act provides that the local Government may make rules for determining the value of land for purposes of jurisdiction in suits mentioned in the Court-Fees Act s. 7 paras. v, vi and x (d). The value for the purposes of jurisdiction is determined by the subject-matter and not by the value of the property itself. *Nanu v. Rash Behari*, 13 C. 255. For rules so framed in the Punjab, See Appendix. As regards Madras, no rules have been framed by the Local Government and hence s. 14 of the Madras Civil Courts Act applies. It enacts that "when the subject-matter of

by providing that merchants should only hold licences if they could keep accounts in England, a rule extended by interpretation to mean that they must be able to do so personally. Indians had already by Act No. 8 of 1896 been deprived of the franchise for Parliament on the specious score that they were members of a race who had not Parliamentary institutions at home, though it does not appear that Russians fell under exclusion. In 1905 it was proposed to deprive them of the municipal franchise also, but the protests of the Imperial Government were directed both to substance and form, and assent was refused, unless it was amended. In 1908<sup>1</sup> three Bills were promoted : one to prohibit further grant of licences to Indian dealers ; one to terminate within a fixed period the validity of existing licences ; and one to prohibit further Indian immigration. The first two were reserved, and never assented to ; against the third measure a Commission reported in 1909, and the same year saw an Act (No. 22) which gave an Indian, refused a renewal of a trading licence, a right of appeal to the Supreme Court as a safeguard from the jealousy of the rival traders who dominated the municipal bodies which dealt with licences.

The record of the Transvaal is still more deplorable. The South African Republic, partly in order to irritate the British Government, insisted on passing an Act, No. 3 of 1885, which refused to allow any Indian to acquire citizenship ; forbade the ownership of real property ; required those who traded to trade in locations ; and enforced registration, exacting further a fee. The British Government took up the matter energetically, seeing that it clearly contravened the provisions of the London Convention of 1884 ; but an arbitration by the Chief Justice of the Orange Free State in 1895<sup>2</sup> referred the matter to the law courts, which decided in a test case in 1898 that the law authorized the removal of Indians for both residential and business purposes into locations. The rest of the war gave the Imperial Government the power and the duty of making good the contentions which they had bitterly pressed against the Boers, but to the indelible discredit<sup>3</sup> of the Empire Lord Milner proceeded to

<sup>1</sup> *Ass. Deb.*, xliv. 326-72, 455-72, 498-500 ; xlv. 1-5, 61-76, 131-43, 317 ; *Council Deb.*, 1908, pp. 70-6, 84-96, 101-3.

<sup>2</sup> *Parl. Pap.*, C. 7911.

<sup>3</sup> Cf. Egerton, *Brit. Col. Policy in the XXth Century*, p. 176 ; *Parl. Pap.*, Cd. 2239, pp. 4 ff., for the new disabilities.

**Suits Valuation Act.**—By s. 8 of the Act, the value of suits falling under this clause is the same both for court-fees and jurisdiction.

## IX. SUITS FOR REDEMPTION, FORECLOSURE, ETC.

**Scope.**—The suits contemplated by this paragraph are (1) suits by the mortgagor for redemption and (2) suits by a mortgagee for (a) foreclosure or (b) to have a mortgage by conditional sale made absolute. The suit by a mortgagee on his mortgage for recovery of the amount received by the mortgagee being a suit for money is of course not covered by this paragraph but falls under paragraph 1 of the section. Nor does the paragraph relate to moveable property. Only immoveable property falls within its scope.

Clause (1) This refers to all suits against a mortgagee for the recovery of the property mortgaged.

**Equity of redemption.**—The right of the equity of redemption is defined in s. 60 of the Transfer of Property Act (IV of 1882) thus "At any time after the principal money has become payable, the mortgagor has a right on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee (a) to deliver the mortgage deed if any with the mortgagor, (b) where the mortgagee is in possession of the mortgaged property to deliver possession thereof to the mortgagor and at the cost of the mortgagor to re-transfer the mortgaged property to him \* \* \*. The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption."

**Valuation.**—The valuation of suits for redemption is according to the principal money expressed to be secured by the instrument of mortgage.

**(a) Principal money.**—It is the amount secured by the mortgage deed.

**(b) Interest on the mortgage amount and payment towards it.**—The valuation must be according to the principal amount secured by the mortgage irrespective of the fact that it is increased by accruing interest or diminished by payments towards it. *Eacharam Patter v. Appu Pattar*, 19 M. 16.

**(c) Discharged mortgage.**—Even in a case where the plaintiff alleges that the mortgage has been discharged and prays for return of the deed, then too the value of the suit is the principal amount secured by the mortgage. *Bansillee v. Sitku*, 57 I. C. 673.

**(d) Payment in kind.**—It was held in *Sreedhara Nambudri v. Perumbara Nair*, 22 L. W. 408, that where in a Malabar Kanom and Porankadan it was agreed that a certain sum and a certain quantity of paddy valued at a certain price was fixed as the amount of the Porankadan, the court-fee payable in a suit for redemption of the

protest, and which had been declared by the law courts not even to be in accordance with the law of the country.<sup>1</sup> The Imperial Government then could agree only to provisions to secure the residence on sanitary grounds of Indians in locations and bazaars, and declined to apply any more severe restrictions to newcomers, while it asserted that those who could reside outside locations must be allowed to acquire property in land occupied for business purposes. As the Government had full power of keeping Asiatics out under the general *Peace Preservation Ordinance*, No. 5 of 1903, and as to legislate on the lines indicated would have meant making some concession to Indians as to ownership of property, it did nothing, and Mr. Lyttelton let the matter, *more suo*, slide. The new Government under Lord Elgin and Mr. Churchill made no effort to secure the elementary rights of the Indians before granting responsible government, though, when they were prepared to give that concession, they had every right to make it conditional on the Boers accepting a decent treatment of the Indians as a counterpart to the generosity shown to them. Of the many melancholy pages of British history few are darker than that of Conservative and Liberal Governments alike in their attitude to the question of Indians in the Transvaal, and, while the wisdom and magnanimity of the grant of responsible government to the conquered colonies must justly be recognized, it is deplorable that no room could be found for justice to other British subjects. The responsibility must be shared by the Indian Government, the India Office, and the Colonial Office, all animated, like the Boers, with contemptuous indifference for a race which appeared content to acquiesce in military domination, and by the Indian people, who in their internecine feuds had allowed themselves to accept the protection of aliens and had not even been roused to self-assertion by the example of the Japanese and Chinese,

<sup>1</sup> Lord Milner's love of segregation reappeared in his scheme in 1920 to impose segregation in residence and business in Kenya, a device fortunately rejected by the final settlement. Similarly, his approval of exploitation of native labour in Kenya is shown in his dispatch, 22 July 1920 (Cmd. 873). His attitude, as shown in his conception of Imperial relations, was true to the doctrine of racial superiority to the last, and undoubtedly, now as in his lifetime, his view has many followers. But it is not a possible basis for retaining India in the Empire. Nor does a naturalized South African Jew appear really more British than an Indian.

usufructuary mortgages the plaintiff is entitled in a suit for redemption to have an account taken between him and the mortgagee and the payment by the mortgagee of whatever might be found to be due to him on the taking of accounts." Per Sundara Aiyer, J., in *Kodi Venkoba Rao v. Suryanarayana*, 12 M. L. J. 493.

Consequently the decisions that relate to redemption of Kanom mortgage, could not be applied to cases of redemption in ordinary usufructuary mortgages. In an usufructuary mortgage the possession of the property passes from the mortgagor to the mortgagee by virtue of the mortgage itself and there is no question of lease or rent arising. It usually happens in such cases for the mortgagee to lease the property to the mortgagor and any claim for rent could obviously arise only in a suit by the mortgagee and not in any suit for redemption: thus a usufructuary mortgage is quite different from a Kanom mortgage which is a simple mortgage and a lease combined, the mortgagor being the lessor.

**(c) Duties of an usufructuary mortgagee.**—Where the mortgagee is in possession of the property s. 76 of the Transfer of Property Act provides that he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee and the receipts from the mortgaged property shall be applied first in the discharge of the interest due and then in reduction or discharge of the mortgage money and the surplus if any shall be paid to the mortgagor.

**(d) Madras view.**—It is presumed that the view of the High Court of Madras is that court-fee is payable on any surplus of receipts that may be claimed by the mortgagor from the mortgagee. In the leading case in Madras which is set out below, Sundara Aiyer, J., has refrained from making a definite pronouncement on this question. Still the judgment contains sufficient indications as to the Madras point of view which is to the effect that where surplus profits are claimed, separate court-fee is payable thereon.

In *Kodi Venkoba Rao v. Suryanarayana*, 12 M. L. J. 493, it was held that all suits merely to redeem mortgages without praying for any additional relief against the mortgagee came under s. 7 clause IX. "In this case, the plaintiff alleged that he believed that the mortgage debt has been discharged by the usufruct of the mortgaged property some time before the plaint. He stated also what he believed to be the annual income from the property. In the prayer in the plaint he asked for recovery of possession and for an account being taken of the income of the property and for payment of whatever may be found due on the taking of the account. The plaintiff did not value his prayer for the recovery of money, having apparently proceeded on the view that no extra stamp duty is payable for recovering any surplus that may be found due from the mortgagees." Sundara Ayyar, J., observes as follows "It is argued that in a suit for redemption, the mortgagor-plaintiff is not bound to pay court-fee separately on any



registration, and the law as to immigration was made more stringent by Act No. 36 of 1908, while the Transvaal Gold Act of 1908, No. 35, contained certain very important disabilities. No right under that law could be acquired by a coloured person, and no holder of a right under that law (e. g. a claim licence or stand licence holder) might permit any coloured person, except his bona fide servant, to reside on, or occupy ground held under, such a right. Further, no coloured person was allowed to reside on proclaimed land in the Witwatersrand mining district except in bazaars, locations, and mining compounds. Existing rights of occupation were safeguarded, but this new disability was hotly resented. Moreover, the Transvaal authorities quite gratuitously showed their indifference to Indian feeling by refusing Mahomedan prisoners the right to observe their religious fasts, and by compelling Hindus to do work involving degradation and loss of caste.<sup>1</sup> Still less attractive was the device by which in 1909 the Transvaal Government, deporting forcibly Indians deemed undesirable, put them over the Mozambique frontier, whence the Portuguese administration in agreement with the Government deported them to India, thus enabling a Colonial Government to get rid of British subjects and preventing them even seeking to assert their rights. The courts were appealed to in vain,<sup>2</sup> through no fault of theirs, but they were bound to pronounce valid the provisions for registration, for deportation, for prevention of immigration. In the meantime the Orange River Colony enjoyed calm, as it had since 1890 effectively kept Indians out, while an Act, No. 12 of 1907, allowed the admission of persons of standing, and so avoided any possibility of awkward incidents. Of minor importance, though galling, were the rules which forbade Indians, like natives, to use sidewalks, to ride in covered cars, to travel first class, and so forth.

The advent of Union promised better things from a government speaking for all South Africa, and under s. 147 solely

<sup>1</sup> *Parl. Pap.*, Cd. 4327, 4584, 5363.

<sup>2</sup> As to deportation, *Hong-Kong v. A.-G.*, [1910] T. P. 348, 432; cf. *Venter v. R.*, [1907] T. S. 910. On entry and registration, *Randeria v. R.*, [1909] T. S. 65; *Naidoo v. R.*, *ibid.*, 43; *Magda v. Registrar of Asiatics*, *ibid.*, 397; *Ho Si v. Vernon*, *ibid.*, 1074; *Chotabhai v. Minister of Justice*, [1910] T. P. 1151; reversed, 4 Buch. App. 305; *Ismail v. R.*, [1908] T. S. 1088; *Lalloo v. R.*, *ibid.*, 624. Cf. *Nathalia's Case*, N. L. R. 552, [1912] A. D. 23.

dency of a suit no court-fee is charged, and as the surplus is the result of accounting directed by the court under O. 37 r. 7, it cannot be separately charged for court-fees. As observed in *Huseni Khanam v. Husain Khan*, 29 All. 471=4 A. L. J. 375, where the mortgagee is in possession, the suit is substantially one for accounts and it would not cease to be so merely because the accounting shows a balance in favour of the plaintiff instead of that of the mortgagee. In a case where the account discloses that money is due on the mortgage to the mortgagee and this sum is decreed in his favour, the decree is not made conditional on payment of court-fee calculated on that amount. There is no reason why if the account results in a surplus as contemplated by O. 34 r. 9 being payable to the mortgagor, he should pay court-fee for the same." In the Madras decision while Sundara Ayyar, J., felt the cogency of the argument that the accounting being a statutory obligation cast on the mortgagee, no separate fee is leviable, still he felt a difficulty arising out of a strict construction of the language of the section "Recovery of possession is the only description contained in the clause. It is therefore doubtful whether it would be right to hold that any prayer for payment of money need not be separately valued." But though the only relief warranted by the language of the clause is 'Recovery of possession' alone still, their Lordships construed the clause as covering not only a suit for the relief of 'recovery of possession' but *all suits* for redemption. A similar and further extension of the application of the clause to cases where the relief is not simply for recovery of possession but also for the recovery of surplus profits seems to be not unwarranted. Otherwise if the language is strictly construed it may lead to anomalies. For instance where there is an accession to the mortgaged properties, a mortgagor could not recover the additional property on the accession, in a suit for redemption, as the language of the clause is the 'property mortgaged' and may not be held to cover later 'accessions.' Again if there is a prayer for cancellation of the mortgage deed as discharged or for reconveyance of the property that will have to be valued separately which is obviously not correct.

And further what is after all the scheme of valuation? The fee is to be levied on the mortgage amount. It may be—and in almost all cases it is so—the amount actually due under the mortgage deed on the date of redemption is a much larger amount than the principal amount on account of accruing interest, or it may be a much lower amount on account of repayments. Still the fee is levied on the principal amount of the mortgage. This is obviously a rough and ready valuation and nothing more. Does the Act provide for the levy of additional fee later on as in the case of account suits? No. Therefore if the view is taken that where there is a claim for surplus profits that should be separately valued under O. VII r. 2, then there is again an approximate value to be put on it and a fee paid which must be readjusted later. In that case there will be practically two valuations, ~~in the same suit.~~ On the whole it is submitted that it is safer to hold

admittance because her marriage could not be held monogamous, however much so in fact, so long as under the law her husband could have married other wives without illegality. Moreover, the Act did not repeal the £3 tax imposed on Indians who did not reindenture in Natal, as a means of inducing them to go back to India. Mr. Gandhi<sup>1</sup> then headed a passive resistance movement, and tried to lead a march of Indians into the Transvaal. The movement was put out with some violence and loss of Indian life, Mr. Gandhi and others arrested, but the Government felt that a Commission was necessary to investigate the issues. The Indians declined for various reasons, some valid, to appear before the Commission, but it was able to present a useful report.<sup>2</sup> It reassured the Indians by proving that there was no intention by the Act to weaken the right of Indians in Natal to acquire a legal domicile in the Union, and that the position in the Orange Free State was simply reasserted, complete exclusion of permanent immigrants with limited entry on condition of neither trading nor farming of persons of position. As regards marriages, the Commission recommended that marriages monogamous in fact should be regarded as so in law, and that Indian marriage officers should be enabled to perform monogamous marriages, and such marriages already performed might be registered *ex post facto*. The recognition of polygamy suggested by the Mahomedans was properly ruled out of court. It recommended the extension to three years of permits for absence of domiciled Indians and easier movements within the provinces for temporary purposes. Further, it condemned the £3 tax in Natal under Act No. 17 of 1895, pointing out that it was never intended then to apply it to women, while its extension under Act No. 3 of 1903 to boys over sixteen and girls over thirteen, who did not leave Natal or indenture, was iniquitous. The report of the Commission opened the way to settlement. Mr. Gandhi and General Smuts came to an understanding, and Act No. 22 of 1914 provided for the appointment of marriage officers to perform marriages with monogamic effects; for the registration *ex post facto* of marriages really monogamic; and for the entry into the Union of the wife and minor children of a domiciled Indian, who had no wife in the

<sup>1</sup> Keith, *Imperial Unity and the Dominions*, pp. 207 ff.

<sup>2</sup> *Parl. Pap.*, Cd. 7265.

ment." S. 3 (2), the Malabar Tenancy Act (Madras Act XIV of 1930). The difference between a Kanom in Malabar and other mortgages has already been explained in the discussion of the judgment of Sundara Ayyar, J., in 12 M. L. J. 493.

## 2. Valuation.

(a) **Simple kanom.**—The valuation of such a suit came up for consideration in *Reference under Court-Fees Act*, 14 M. 480. In that case the Kanom amount, *viz.*, the mortgage money has been practically paid off by rent that accrued due and payable by the mortgagee to the mortgagor. The question was whether while the actual amount due is a smaller sum than the mortgage money the plaintiff should nevertheless pay the court-fee on the whole principal amount secured by the mortgage. It was held that he should. Their Lordships observed as follows :—"It is urged that the original debt may have been considerably reduced by payment made prior to the institution of the suit and that it is not reasonable to compel the plaintiff to pay institution fee on so much of the debt as has been extinguished by payment. But the language of the sub-section is clear and unambiguous and according to it, institution fee is payable on the principal money expressed to be secured by the instrument of mortgage. *The intention is to make the principal money so secured the criterion of the value of a suit for redemption.* It may be that the Legislature did so provide because the amount actually due by the mortgagor to the mortgagee must be a matter of account to be taken in the suit and therefore uncertain at date of its institution." It may be noted that the general principles enunciated by their Lordships suggest a more liberal view on the question of the computation of court-fee than what is warranted by the later decisions of the Madras High Court. For, if the accepted view is that the Legislature intended that the value of the principal money should be the *sole* criterion for a suit for redemption, then it follows that when additional relief in the shape of the recovery of surplus rent is asked for, no additional court-fee is leviable.

(b) **Redemption coupled with other reliefs.**—In *Rama Varma v. Kadir*, 16 M. 415, the prayer was for redemption and recovery of arrears of rent in respect of a Malabar Kanom, the court-fee was levied both on the principal amount of Kanom debt and the amount claimed as arrears as they were held to be two distinct causes of action. In this case it did not appear that the arrears of rent were intended to be set off against the mortgage debt, and rendered items of account to be taken between the mortgagor and the mortgagee. In this case the Kanom debt was Rs. 35,000 and the rent claimed was Rs. 1,917. If the rent had been prayed to be set off against the debt, the plaintiff need have paid court-fee only on the principal Kanom mortgage amount and no fee need have been paid on the claim for rent. The decision in 14 M. 480 was not referred to. See also *Kona Sundara v. Karunabaga* 16 M 302

for temporary purposes, pleasure, commerce, and study. India also pressed in 1918 for the repeal of the Act of 1885, which had to be evaded by the registration of companies whose members were Indian, and who thus could hold land, and objection was taken to recent rules as to railway accommodation as derogatory to Indian dignity. But no such result was achieved. On the contrary, fresh disasters awaited the Indians. They had since 1914 commenced to trade in many townships where they had not formerly been, despite the fact that in some cases their stands were on proclaimed land, under the Gold Law of 1908, from which they were excluded, while in other cases the land occupied was held under the township's law on conditions forbidding the presence on it of any native or coloured person. Licences to trade were needed by these new traders, and the municipal councils in some cases refused applications, but their refusals were upset on appeal to a magistrate under the Transvaal law. On the other hand, one council obtained from the Supreme Court an injunction forbidding a European to allow Indians to occupy certain stands and shops on the score that the action was forbidden by the Gold Law. The repeal of the Gold Law was demanded, but the petition to Parliament to this effect was indeed referred to a select committee, but at the same time the body was instructed to inquire into the evasion of the law of 1885 by the device of forming companies which, as not being persons in the sense of the law of 1885, could hold land. The committee's report resulted in Act No. 37 of 1919, giving to every trader who on 1 May 1919 was carrying on business under licence on proclaimed land or on a stand or lot in a township, or to his successor, power to continue in the business as established. The operation of the Gold and Township Laws was thus suspended in their case, but the rest of the Act was directed at overthrowing the formation of companies to hold land, it being expressly declared that the prohibition of the Act of 1885 applied to any company in which one or more Asiatics had a controlling interest, while the registration of mortgage bonds over fixed property in favour of an Asiatic was also prohibited.<sup>1</sup> Further, on 3 February 1920 a Commis-

<sup>1</sup> Cf. *Madrasa Anjuman Islamia v. Municipal Corporation of Johannesburg*, [1922] 1 A. C. 500; [1919] A. D. 439; cf. [1917] A. D. 718; Keit, *J. C. L.* iv. 241.

5. But when the rent is sought not merely to be set off against and deducted from the Kanom amount but where the rent exceeds the mortgage money a sum is sought to be recovered by the mortgagor, the court-fee is payable both for redemption on the principal money and on the surplus claimed from the mortgagee.

6. The mortgagor in a suit for redemption need not necessarily fix a value on the claim for rent. As the amount could be ascertained only later, no court-fee is payable when the suit is filed but only on the ascertainment of the amount by the court.

7. The same rules apply to amounts claimed as damages or as compensation for improvements effected.

**Suits for possession, redemption, etc. in Malabar.**—The peculiar land laws that prevail in Malabar render the application of the Court-Fees Act to suits arising thereunder highly artificial. For a full discussion of this topic and the necessity to frame rules to cover these cases see the commentaries at the end of section 7.

### **Court-fees in certain specific cases.**

**1. Declaration and redemption.**—Where a plaintiff prayed for a declaration that a decree obtained against him and a sale held thereunder are void on the ground of fraud and for redemption, it was held that the prayer for redemption was a consequential relief and that an *ad valorem* court-fee on the value of the share of the property claimed is payable. *Pandit Brij Krishna Das v. Chawdhury Murli*, 4 Pat. L. J. 703.

**2. Suit between co-mortgagors.**—Where one of two co-mortgagors has redeemed a mortgage asserting that he has got the sole right to redeem, and the other asserts equally exclusive right to redeem, the suit of the other co-mortgagor in enforcement of his right to redeem is a redemption suit and must be valued on the amount of mortgage. *Shanker Baksh v. Ram Bahadur*, 70 I. C. 311 = 1922 Oudh 45.

**3. Usufructuary mortgage.**—A suit for recovery of possession by a usufructuary mortgagee also falls under clause ix. *Karaman Singh v. Norman Cockell*, 1 C. W. N. 670. In a suit for possession as usufructuary mortgagee the court-fee payable is on the market-value of the mortgagee interest in the property, *i.e.* the mortgage money on payment of which the property can, at any time, be redeemed. The expression "market-value" in s. 7 (v) (d) of the Court-Fees Act means the market-value of the subject-matter of the suit. This is akin in principle to *Ramraj Tewari v. Girnandam*, 15 A. 63 and *Radha Prasad v. Path Ojab*, 15 A. 363, where it was held that in a suit for ejectment of a tenant the subject-matter is the value of the tenant's interest which was in dispute. *Mahid v. Gajadhar*, 73 I. C. 244.

session of 1924 the Class Areas Bill which was to empower the Government to enforce a segregation of Indians for residential and trading purposes in certain governmental areas. The dissolution of Parliament for the moment ended the situation, but left the new Government with the same insistent public demand for action.<sup>1</sup> It itself took up a new line of attack, for it proposed that the Colour Bar Bill of 1925 should debar by law the Asiatic as much as the native from any kind of skilled work, down, as Mr. Jagger pointed out, to the working of lifts; and the Government, despite every protest, as has been seen, persisted in the policy, though in the long run it consented to enumerate the classes who could have authority to perform skilled work instead of *nominatim* excluding Asiatics, it having been pointed out, *inter alia*, that Japan might well resent, as needlessly insulting, this measure. It was pointed out effectively by the opposition that a Minimum Wage Bill was the proper method of securing fair treatment for Europeans, and that it was ludicrous to pay large sums on education of natives and forbid them to become skilled. The Bill was lost by 17 to 13 in the Senate, but the Government declined to consider the request of the municipality of Durban in July that there should be a conference on the Asiatic question, persisting instead in efforts to deport as many Asiatics as possible on a voluntary basis and in seeking to carry the Class Areas Bill in the session of 1926 in the face of vehement protests of the Government of India, which welcomed with rather exaggerated enthusiasm the concession that the measure should be referred to a select committee for investigation before it passed the second reading, so that representatives of Indian views could appear to point out its demerits. On 23 April, however, the Minister of the Interior announced in the Assembly that, as the result of renewed negotiations with the Government of India, a formula had been agreed upon to determine the nature of a round-table conference for the purpose of 'exploring all possible methods of settling the Asiatic question in South Africa, on the basis of the maintenance of Western standards of life by just and legitimate means'. The Union Government, in order to ensure that the conference should meet under the best auspices, had decided,

<sup>1</sup> Assent was now given to the Natal Ordinance, consistently disallowed by General Smuts's advice, excluding Indians from the municipal franchise.

for purposes of jurisdiction. Odgers, J., observed as follows: "It is admitted that I am concluded by authority of a Bench of this Court in *Jallaluddin v. Vijayasawmi*, 39 M. 447, wherein it was held that the Suits Valuation Act has not fixed any method of valuing a redemption suit, that the authority of *Zamorin of Calicut v. Narayanan*, 5 M. 281, remains unaffected and that the principal debt must be taken as determining the jurisdiction under the Civil Courts Act. There is apparently a recent dissenting judgment in *Sarada Sundari v. Akramanissa*, 51 C. 757, where the Madras decision is disapproved". In the end it was held that it was not necessary for the Court to decide the point.

**Bombay.**—The view of the Bombay High Court is that the valuation is not on the principal money secured by the deed but on the amount found to be actually due on the document.

In a redemption suit, the whole of the mortgagor's interest is not except in rare instances in litigation. The measure of the value of the subject-matter in contention is the sum which must be paid for the recovery of possession of the property. Under the Court-fees Act, the valuation of such a suit is estimated according to the principal money expressed to be secured by the instrument of mortgage; but the rules contained in that Act are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for any purpose for which the Act does not provide; as for example, for purposes of jurisdiction, see *Bai Maliks v. Bulakshi Chakko*, 1 B. 538." *Rupchand v. Balvant*, 11 B. 591.

In a redemption suit, the valuation of the subject matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied and the mortgagee does not say what he claims in respect of the mortgage debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit. *Amirta v. Naru*, 13 Bom. 439.

**Calcutta.**—According to the Calcutta High Court, the valuation depends on the value of the subject-matter of the suit. Where a suit for redemption was filed in the court of the Munsif who proceeded by way of a preliminary issue to decide the question whether he had the pecuniary jurisdiction to try it, and upon the evidence let in on both sides came to the conclusion that the debt due by the plaintiffs to the defendants was over Rs. 1,000, and consequently the suit was beyond his jurisdiction, the plaint being accordingly returned for presentation to the proper court, it was held that the order was correct and that in redemption suits, jurisdiction would depend not on the amount assessed but on the amount ultimately found to be due. The decision in *Kedar Singh v. Matabadal Singh*, 31 A. 44 and in *Jallaluddin v. Vijayasami*, 39 M. 447 were dissented from." *Sarada Sundari v. Akramanissa*, 51 C. 737. Their Lordships observed thus at page 742 of the Report: "If the Legislature has not contemplated a change in



§ 5. *The Kanakas in Australia*

A curious chapter in Australian history consists of the tale of the introduction of Kanakas from the islands of the Pacific into Queensland for labour on the sugar plantations, the current belief being that sugar work was impossible for Europeans. The protection accorded to these natives by the *Pacific Islanders Protection Acts* of 1872 and 1875 was doubtless inadequate, even when Colonial Acts supplemented their defects, but gradually the kidnapping and malpractices of the older régime passed away. But the demand for a white Australia, which grew steadily during the last decade of the nineteenth century, proved fatal at last, and the Commonwealth Parliament legislated in 1901 (No. 16) to deport them gradually. Representations were made by the Aborigines Protection Society which indicated the dangers of the men being returned to islands with which they had lost connexion, while the Resident Commissioner of the Solomon Islands pointed out that those who had contracted irregular marriages when in Queensland, or had otherwise violated native custom, might run serious risks on their return. The Imperial Government held, inevitably, that the matter was one for the Commonwealth to decide, and that Government determined to persist in the policy, but in 1906, by Act No. 22, modified it, so as to afford those who had really made Australia a genuine home permission to remain.<sup>1</sup> Great care was also taken to arrange for the safety of the deportees, whose removal was affirmed as legal by the High Court in *Robtelmes v. Brennan*.<sup>2</sup> It became necessary as a result of the loss of the Kanaka labour to pay high bounties to secure the maintenance of the industry, but it has been established that Europeans accustomed to Australian heat can easily enough do the work, and that immigrants from Italy make excellent workers. The complete elimination of Asiatics from the industry was accomplished in 1913 by legislation by both the State<sup>3</sup> and the Commonwealth. It is anticipated that the output will eventually be sufficient for Australian needs, and that ideal has now been realized, but the retail price of sugar is necessarily put high (4½d. a lb.).

<sup>1</sup> *Parl. Pap.*, Cd. 1285, 1554; Commonwealth *Parl. Pap.*, 1908, No. 173; Turner, *Australian Commonwealth*, pp. 25, 33 ff., 52, 141.

<sup>2</sup> (1906) 4 C. L. R. 395.    <sup>3</sup> No. 4; *Addar Khan v. Mullins*, [1920] A. C. 391.

**Madras.**—In a *Reference under the Court-Fees Act* reported in 29 Mad. 367, it was held that paragraph ix of s. 7 applied only to suits and not to appeals therefrom which is chargeable on the amount actually in dispute in appeal. The opinion was based on the fact that sub-section (e) of clause iv, specially provides for a memorandum of appeal, while there is no such provision in paragraph (ix). "The repeal of s. 16 also shows that the general policy of legislature was to make the value of the subject-matter in dispute in appeal the criterion for the purpose of computing the fee". This decision is referred to in *Sekharan v. Eacharam*, 20 M. L. J. 121 = 3 I. C. 459, a later decision of the Madras High Court, wherein the whole scheme of valuation under para (ix) is fully discussed as follows. "The court-fee payable on a document of any of the kinds specified in the First or Second Schedules of the Court-Fees Act is indicated in one or other of those schedules—*Vide* ss. 4 and 6 of the Court-Fees Act. Article 1 of schedule I is a general article indicating the fee payable in respect of a plaint or memorandum of appeal not otherwise provided for in the Act, that is we take it not falling under any other Article of the First or Second Schedules, as it is those schedules alone that indicate the fee. A perusal of the two schedules will show that a plaint or memorandum of appeal in a redemption suit can only come under Article 1 of schedule I. Under that article the court-fee has to be computed at a stated rate on the amount or value of the subject-matter in dispute so that before we can ascertain the amount of the fee we must know the value of the subject-matter in dispute. Now a suit for redemption is a suit to recover property mortgaged on payment of what is alleged to be due to the mortgagee. The plaint may show that in addition to the principal money arrears of interest and compensation for improvements are payable to the mortgagee before the property can be recovered. It may also indicate that the defendant is claiming more under one head or another than the plaintiff admits to be due. Nevertheless s. 7 para ix of the Court-Fees Act lays down that the fee in such a suit shall be computed according to the principal money expressed to be secured by the instrument of mortgage. Hence in such a suit it must be taken that for the purposes of Article 1 of Schedule I the value of the subject-matter in dispute is the said principal money. From this it seems reasonable to infer that for the purposes of the Court-Fees Act the subject-matter of dispute in a redemption suit is the existence of the right to redeem, any question as to the amount payable as the condition of redemption being regarded as merely incidental to that right. Let us suppose that such a suit is dismissed and that the court dismissing the suit has also recorded a finding that if it were found that the plaintiff had the right to redeem he would have to pay more than the amount alleged by him to be due. The plaintiff on appeal would necessarily urge his right to redeem, and might also contest the finding as to the amount payable. The nature of his suit in appeal would, however, be in no way altered and there is no sound reason why the

to the Empire follow from this result, which accords entirely with the conditions affecting New Zealand. It may be hoped that in due course all the minor disabilities imposed on Asiatics in the States and in New Zealand will be withdrawn as unworthy of great states and utterly needless for the public safety.

The case of the Union is infinitely more difficult, because the case of the Indians is bound up indissolubly with that of the natives. The Union Government might indeed have sought a solution along the lines of accepting the Indians as assimilated to the coloured population, but this would have been clearly impracticable on account of the impossibility of drawing any distinct lines between many of the Indians and many of the natives. It has followed, therefore, that Indians and Africans alike have been marked out for the policy of segregation and refusal of the chance of working except as an instrument of unskilled labour for skilled white labour. The theory is ludicrously out of harmony with the facts, and doubtless it is this which has made the Union so desperately anxious to expel to India people of whom some 70 per cent. have never known any but a South African home. The immorality of such action is clear and convincing to all save those who, like Mr. van Hees, hold that there is a fundamental right of the white population to dominate all coloured people.<sup>1</sup>

place in the sun includes Australia, and pressure is tried, a very serious situation will arise. The Italians work hard, but do not mix, and remain self-contained units.

<sup>1</sup> For the agreement of 1927, see App. B.

plaintiff included a condition that the plaintiff should pay the defendants a specified amount as and for improvements. This condition in the decree was in appeal deleted. It was observed thus "The provision in the Court-fees Act is that in respect of a memorandum of appeal in such a case the court-fee payable is *ad volorem* on the amount or value of the subject-matter in dispute. The true logical position then is that, if the subject-matter in dispute in appeal has reference merely to the value of the improvements, then the value thereof should be taken to be the value for purposes of appeal and court-fee should be paid thereon. \* \* \* Though there is considerable force in the contention of the respondents that the subject-matter in dispute has reference only to the amount of compensation and that the question of title raised is a mere camouflage for escaping liability for court-fees, we are not prepared to say that especially in the case of an enactment for revenue purposes such as the Court-fees Act, it is not open to parties to avail themselves of any camouflage that the law allows or does not forbid. We are not prepared to say that it is open to a court in such circumstances to neglect the actual form of the appeal and determine the question of court-fees having regard to what may be said to be the substance of the claim." \* \* \* The decisions in 23 M. 84, 20 M. L. J. 121, and 45 M. 246 were then referred to. They further observed. "In *Nellyoton Paidal Nair v. Emperor*, 1926 Mad. 225, where a plaintiff who got a decree for the redemption of a kanom, appealed against the amount which he had been ordered to pay as compensation for improvements, Philipps and Ramesam, JJ., decided that he must pay court-fee on the amount of compensation which he disputed. The effect of these cases is that the *obiter dictum* in 23 M. 84 that even where the only question raised is as to the value of the improvements the appellant should not be called upon to pay any fee other than that payable in a suit for possession of land has not been adopted in later cases. But the actual decision in 23 M. 84 that defendant disputing on appeal both the plaintiff's title to recover and the amount of compensation to be awarded need pay court-fee only as on a suit for recovery of possession, has never been overruled. It is not clear whether in *In re Porkodi Achi*, 45 M. 246, Kumaraswami Sastriar, J., intended to express his dissent both from the *obiter dictum* and from the actual decision in *Reference under Court-Fees Act*, s. 5, 23 M. 84. If the latter was his intention, his opinion was itself an *obiter dictum*." S. A. 1266 of 24 (Madras High Court) in which Srinivasa Aiyangar, J., came to a decision contrary to that in 23 M. 84 was explained away by the learned Judge himself. "It is not difficult to find arguments against the decision in 23 M. 84. But that decision has stood for nearly 30 years and has been followed in almost innumerable cases in Malabar and in this Court. I agree that we must continue to follow it." Per Reilly, J., in 1928 Mad. 929.

**Oudh.**—The decision of the Judicial Commissioners of Oudh in *Sangat Baksh v. Raiyat*, 25 O. C. 30, is equally lucid and presents

at Lisbon for the Union Government. None of these three agreements are properly speaking treaties, but they definitely had sanction from the Imperial Government. On the other hand, the arrangement between the Canadian and United States Governments in 1911<sup>1</sup> for reciprocity was never a treaty, despite its enormous importance, and the Imperial Government was not asked formally to approve it, nor had it any responsibility for it. As will be seen, it is the object of the resolution of 1923 to afford a more satisfactory means of dealing with such large questions as that of 1911, but the procedure of 1911 is still available for use. The High Commissioner for South Africa in the days before the annexation of the Transvaal and Orange Free State was entrusted with a power of negotiation with these bodies,<sup>2</sup> and a number of agreements were made by him in this capacity, as for instance that with the Transvaal as to Swaziland in 1894. Agreements were also entered into by the Governors of the two colonies and the States, as in the telegraph convention of 11 August 1884. Quite informal, though strictly observed, were the agreements of Queensland with Japan in 1899 and of the Commonwealth with that power in 1904 as to immigration.<sup>3</sup>

There is no doubt as to the principle that a treaty concluded by the King on the advice of the Imperial Government binds the whole Empire, unless its operation is strictly expressed to be local in effect. In many cases local limitation is easily possible, e. g. in a treaty respecting trade between Canada and France ; in other cases, e. g. a treaty of alliance, local limitation can only be partially effected. Thus the Locarno Pact of 1925 imposes on the Crown the obligation to render armed aid, that is to go to war, on certain eventualities occurring, and by doing so the Crown inevitably becomes involved in war in respect of the whole area of the British Dominions. But the pact does exempt the Dominions and India from obligation to render active aid in the case of such a war, unless the pact is accepted by the

<sup>1</sup> The precariousness of the arrangement told against it; Skelton, *Sir Wilfrid Laurier*, ii. 372 f.

<sup>2</sup> Cf. Lord Selborne's Commission, 1905, clause iii ; Lord Gladstone's, 1910. For the old conventions, see Cape *Parl. Pap.*, 1898, G. 81.

<sup>3</sup> Queensland *Parl. Pap.*, 1899, A. 5 ; Commonwealth *Parl. Pap.*, 1905, No. 61.

s. 7 read with Article 1 of Schedule I and on the latter the court-fees would be *ad valorem* on the difference between the amount found due by the lower court and that claimed by the appellant.

**Lahore.**—The Lahore High Court has held that where the mortgagee appeals against a decree in a redemption suit contesting not only the finding of the lower court as to the amount payable by the mortgagor before he can redeem the mortgage but also that the transaction is a sale and not mortgage as held by the lower court, court-fee is payable on the principal sum secured on the mortgage and not on the amount claimed. *Abdul Aziz v. Rahmatulla*, 1933 Lah. 155.

**Allahabad** —In *Raghubir Prasad v. Shankar*, 36 A. 40 (F. B.) it was held modifying the rule in *Baldeo v. Kalka Prasad*, 35 A. 94 that the provision of paying court-fee on the principal mortgage money is limited to suits. The principle was laid down as follows: "The criterion laid down in s. 7 para ix of the Court-Fees Act for determining the court-fees payable in respect of a suit for redemption or foreclosure does not apply to appeals in such suits. In case of appeals or cross objections in suits for redemption or foreclosure, in all cases in which the amount declared by the court to be due at the date or the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal or cross objections should be valued." See also *Prag v. Bhagwan Din*, 47 A. 926, where the question for decision was the amount of fee payable in a memorandum of appeal by a plaintiff whose suit for foreclosure of a mortgage has been dismissed. *Ragubir Prasad v. Shankar Baksh*, 36 A. 40 F. B. was a case of cross objections by the defendant asking that a foreclosure decree should be set aside and the suit dismissed. The Full Bench held that the fee prescribed by s. 7 clause (ix) applies only to suit which is instituted in the court of first instance. In the case of an appeal the court-fee payable is an *ad valorem* court-fee on the value of the subject-matter of the appeal (*Vide* Schedule I Art. 1.) Though the Full Bench dealt with cross objections by the defendant and not with an appeal by the plaintiff, the principle on which that decision rests is equally applicable to those cases.

**Patna.**—A similar view was taken also by the Patna High Court where it was held that in appeals from original decrees the court-fee is leviable on the sum due at the date of the original decree. In second appeal the court-fee is leviable on the sum due at the date of the decree of the lower appellate court. *Rowlins v. Lachimi Narani*, 3 Pat. L. J. 443.

**Valuation where the subject-matter in appeal is only a portion of the mortgaged property.**—Where in an appeal from a foreclosure decree, the appellant seeks exoneration of any property from liability under the decree, the relief sought is not merely declaratory, but a consequential relief of exemption of specific property from the scope of the decree is definitely claimed and therefore a fixed

dent in 1926. The time for consultation is after conclusion and before ratification, though even now as to minor treaties the Government of Mr. Baldwin has refused to be bound to submit for formal approval, a doctrine accepted by Mr. R. MacDonald's Government in 1924.<sup>1</sup> A similar practice exists in the Dominions. The result, therefore, is that a treaty concluded by the Crown is understood by all contracting parties to be certain of ratification only after submission to Parliament, though the British system of responsible government gives the assurance that the Government will normally spare no effort to secure ratification. Nevertheless, it cannot be too clearly understood that ratification can be expressed by the Government without Parliamentary sanction, and, whereas in the Anglo-French Agreement of 1919 regarding the defence of France from German aggression it was the Parliaments of the Dominions which alone were empowered to make the agreement binding on the Dominions, the Locarno Pact gives the power to the Governments of the Dominions and India. There is much to be said against the change<sup>2</sup> in this case, because it is perfectly clear that no Dominion, not even New Zealand, could accept such an obligation without sanction from Parliament, and the best excuse for the change is the fact that in India it was determined to keep the matter for the Government, an attempt to raise it in the Assembly being ruled out by the Governor-General. But the fact is significant of the existence and vitality of the doctrine of the sole power of the executive to conclude treaties. Moreover, it must also be recognized that the autonomy of the Dominions is similarly merely a matter of internal concern, apart from their curious status under the League of Nations; a treaty concluded by the Crown could bind them against their will, though it is now an essential part of the constitutional understandings in the Empire that they should never be bound save with their own consent.

Can there be a treaty in international law between two parts of the Empire? This query is naturally suggested by the three treaties made with the Irish Free State between 1921 and 1925.

<sup>1</sup> Mr. Ponsonby, House of Commons, 1 April 1924.

<sup>2</sup> Canada proceeded to neutralize it in June 1926 by resolving that the assent of Parliament was essential to any treaties involving military or economic sanctions.

by the mortgagor and the equitable principle laid down in 30 Madras could well be applied to appeals arising out of redemption suits.

The views of all the High Courts inclusive of that of Madras have been fully considered in the above quoted decision of *Punjari v. Ram Chand*.

**Madras.**—In *Krishnama Chariar v. Srinivasa Ayyangar*, 4 M. 339, it was pointed out that for purposes of jurisdictional value there are two considerations—the amount of the charge, and the value of the property it is sought to make available for the satisfaction of the charge. The judges of the Madras High Court observed in that case that, if the value of the property is in excess of the charge, the value is amount of the charge, for the subject of the suit is the right to make the property available for the satisfaction of the whole charge; but where the value of the property is less than the amount of the charge, the subject-matter is the right to make the property available for the satisfaction of the charge so far as the property will suffice, and it cannot suffice to satisfy more than a sum proportionate to its value. Consequently in such cases, the value of the subject-matter is the value of the property. This view was accepted by Ismay, J. C., in *Mojiram v. Nandram*, 16 C. L. R. 161, in which also the question was as regards the jurisdictional value of the claim.

The principle laid down in the aforesaid Madras case was extended with approval by the Full Bench of the Madras High Court itself in *Kesavaraju Ramakrishna Reddi v. Kotta Kotta Reddi*, 30 M. 96 = 16 M. L. J. 458, even to a case in which they had to determine the value of the subject-matter in dispute in appeal for purposes of court-fees payable on the memorandum of appeal. Another previous decision of the same High Court reported as *Venkappa v. Narasimha*, 10 M. 187, was also noticed with approval and accepted as laying down a correct principle of law. In *Venkappa v. Narasimha*, 10 M. 187, the decree directed the payment of a certain amount, and in default that the lands of the defendants be sold and the sale proceeds applied to the payment of the debt. Some of the defendants appealed against so much of the decree as declared the liability of their property and prayed that the same may be released from the decree; it was held that the relief sought was not merely declaratory but one for exoneration of the appellants' land from liability and that the proper stamp to be paid on the memorandum of appeal was not Rs. 10 as in a declaratory decree, but a fee calculated on the value of the debt not exceeding, however, the value of the property. According to the Madras High Court then, the relief of exemption of property is not merely declaratory and the value of the debts or the value of the property whichever is less, determines the value of the relief in appeal for purposes of court-fees in such cases.

**Calcutta.**—This view was accepted by the Calcutta High Court in *Jagatdhar Narayan Prasad v. Brown*, 33 C. 1133, and *Bibi Usatal Batul v. Nanji Koer*, 11 C. W. N. 705 and also in *Jagat*



accept the plea as adequate, ruling that, if the treaty were relied on as justifying the action taken, it must be specially pleaded. They declined to commit themselves on the question whether treaties of peace, or treaties akin to such treaties, or any other treaties, could authorize overriding the common law rights of British subjects in Newfoundland. The Imperial Government, however, apparently felt convinced that it was no use seeking to carry the matter farther, and paid in lieu damages for property destroyed by Sir B. Walker. Again in *Brown v. Lizards*<sup>1</sup> it was laid down that extradition requires a law as well as a convention, and cannot be carried out merely on the strength of the latter. There are a number of Transvaal cases<sup>2</sup> which show that legislation is requisite to give effect to a treaty, and, though the power of treaties to invalidate legislation has been asserted in British Columbia,<sup>3</sup> it has been rejected elsewhere in Canada.<sup>4</sup> The illegality of various anti-Japanese acts in British Columbia has always rested on the repugnance of such acts to the Dominion statutes putting in force the Anglo-Japanese treaties, and Mr. Deakin quite correctly insisted in 1902 that the law of the Commonwealth could not be altered by treaty. It is, in fact, clear that to admit that it could be would allow very serious inroads on legislative sovereignty.

The rule, accordingly, has always been for legislative effect to be given to treaties,<sup>5</sup> and when the local law requires change it has in all commercial matters regularly been left to the Dominions to enact these laws, either by themselves or contemporaneously with Imperial legislation where that was requisite. Thus both the Imperial and Canadian Parliaments

<sup>1</sup> 2 C. L. R. 837. See also the New Zealand cases, *Wi Parata v. Bishop of Wellington*, 3 N. Z. J. R. (N. S.) S. C. 72; *Nireaha Tamaki v. Baker*, 12 N. Z. L. R. 483, overruled in [1901] A. C. 561. Cf. *Vincent v. Ah Yeng*, 8 W. A. L. R. 145.

<sup>2</sup> *Tsewu v. Registrar of Deeds*, [1905] T. S. 30; cf. [1904] T. S. 241; *Greenberg v. Williams*, 3 H. C. G. 336; *Cook v. Sprigg*, [1899] A. C. 572; 9 C. T. R. 701. See also *Stoeck v. Public Trustee*, [1921] 2 Ch. 67, 71; *In re Employment of Aliens* (1922), 62 S. C. R. 293, 304.

<sup>3</sup> *Tai Sing v. Maguire*, 1 B. C. (Irving) 101.

<sup>4</sup> *A.-G. for New Brunswick v. C. P. R. Co.*, discussed in 2 *Can. Bar Review*, 211; Keith, *J. C. L.* vi. 201 f. The Privy Council refused to allow appeal, 94 L. J. P. C. 142.

<sup>5</sup> Cf. *Wigg v. A.-G. of the I. F. S.* (1927), 43 T. L. R. 457.

the claim in the lower court has been foreclosure of the quarter of the property which has been declared liable or the remainder that has been declared not liable, the assumed value of the claim for the purpose of calculating the amount payable as court-fees on the plaint would have been still the principal sum secured by the mortgage, and, that valuation would, as explained in *Dhiraj Singh v. Raja Ram*, 8 I. C. 1125 be the correct valuation in appeal'. With all due deference, I think, I must refrain from accepting such a construction, because unless the language of a fiscal enactment like the Court-Fees Act is clear and unambiguous so as to entitle the court to levy higher duty on a relief, it must be construed very strictly and not in a manner, that would result in demanding more court-fee for a less valuable claim. If the value to the appellant is the test, as I think it ought to be, then it follows that the valuation of the subject-matter in dispute in appeal must be determined with reference to the amount at which he values the prejudice caused to him by the decree he appeals against. If he appeals against only that part of the decree which injuriously affects him, or his interest and he finds that the said injury is fully remedied, either by including or exonerating certain property, within or from the scope of the decree, or by reducing or enhancing the amount of the decree, as the case may be, and if the value of such a relief is capable of being estimated in money, I do not see any valid reason why the "assumed" value for purposes of court-fees should continue to be a constant factor even at the stage of appeal as observed in *Dhiraj Singh v. Raja Ram*, 8 I. C. 1125. It is very likely that in some cases the amount of the liability may be less than the value of the property and in others the value of the property may be less than the amount of the debt. To levy court-fee on the lesser of the two values would be consistent with the principle underlying the Court-Fees Act as also the reported cases referred to above. It would be unjust to call upon an appellant to pay court-fee on the value of the property even if the debt from the payment of which he seeks exemption, be less than the price of his property. Similarly, it would be inequitable to demand court-fee with reference to the value of the entire debt, even though the debt or the proportion chargeable against any property be less than the value of the whole or portion of the property sought to be charged with or exempted from liability under the decree. It sometimes happens that by reason of repayments admitted or held proved or for other reasons such as reduction of interest, etc., the debt is reduced by the court to an amount below even the principal sum secured by the mortgage. If in such a case, the property or any portion thereof sought to be exonerated or included be worth much more than the decretal debts, there is no reason why an appellant interested in procuring such exemption or inclusion of property or its portion, from or within the operation of such decree, should be made to pay court-fee on the principal sum secured by the mortgage. If this court is laying down the rule in *Dhiraj Singh v. Raja Ram*,

1871 expressly provided for ratification by the provincial legislatures. The United States Government hastily dropped the untenable suggestion. Similarly, the effort of France in 1891-2<sup>1</sup> to insist that Britain should enforce the French treaties by her legislation, colonial legislation being inadequate, was firmly repelled. It is, in fact, plain that the Crown must carry out its obligations, but it can carry them out as it pleases, and both the constitutions of Canada and of the Union expressly admit this power of legislation for treaty ends.<sup>2</sup> The tribunal which arbitrated on the North American fisheries in 1910<sup>3</sup> expressly recognized that both Canada and Newfoundland would be able to legislate for the fisheries in such a way as to bind American citizens. It is, however, clear that the final decision as to the interpretation to be put on a treaty by the Crown may be claimed by the Imperial Government in the ultimate issue, since it must bear the brunt of any foreign demand. Thus in 1875<sup>4</sup> the Imperial Government ruled that British Columbia, having entered the union in 1871, could not claim the benefits of the Washington treaty of 1871, and in 1907<sup>5</sup> it asserted its determination to refuse the Newfoundland contention that the American treaty rights were so clear that the British view should be enforced regardless of the protests of the United States.

The application of treaties to newly acquired territories presents certain points of difficulty, but the general rule<sup>6</sup> is clearly that such territories fall under any general treaties affecting the Crown generally, apart from the fact that under modern constitutional usage such territories would have been given an option to choose whether the treaty would or would not become applicable to them. Thus it cannot be doubted that the Transvaal and Orange River Colony when annexed immediately fell under all general British treaties.

<sup>1</sup> *Parl. Pap.*, C. 6703, p. 47.

<sup>2</sup> 30 Vict. c. 3, s. 132; 9 Edw. VII. c. 9, s. 148.

<sup>3</sup> *Parl. Pap.*, Cd. 5396 and Cd. 6450.

<sup>4</sup> *Canada Sess. Pap.*, 1876, No. 42; 1877, No. 100 (French duty on ships).

<sup>5</sup> *Parl. Pap.*, Cd. 3765.

<sup>6</sup> Keith, *State Succession in International Law*, p. 21; Westlake, *Int. Law*, i. 67. All old treaties still bind the Irish Free State.

3 I. C. 459, is that where the mortgagor plaintiff whose suit has been dismissed urges in appeal his right to redeem and also contests a finding of the trial court about the amount payable by them as a condition precedent to his redemption, the nature of the suit in appeal is not altered and the appeal memorandum has to be valued "as in the case of the plaint, as otherwise there is no provision in the Court-Fees Act for valuing it." But the view expressed in *Sangat Baksh v. Rawat*, 25 O. C. 30 is different. It states that "where a decree has been passed for redemption on payment of a certain sum and in appeal the defendant not only denies the plaintiff's right to redeem but in the alternative claims that if he be entitled to redeem he can do so only on payment of a larger sum than fixed by the lower court, the court-fee will be paid on the relief which is liable to pay the higher fee". The view of the High Courts of Allahabad and Patna is however that the fee is payable on the amount ascertained as due by the lower court.

### **Certain specific instances of appeals.**

**1. Appeal against conditional decree for foreclosure.**—In a suit for foreclosure a decree was passed in favour of the plaintiff conditionally on his redeeming a prior mortgage by paying a specified sum. The plaintiff appealed assailing the validity of the prior mortgage and stamped his memorandum of appeal with an *ad valorem* court-fee on the amount of the principal sum of money secured by the prior mortgage. It was held that the proper amount of court-fee payable was an *ad valorem* court-fee on the amount which the plaintiff had been ordered to pay to the prior mortgagee. *Baji Lal v. Govardhan*, 21 A. 265.

**2. Appeal against decree for redemption and mesne profits.**—Where a decree has been given for mesne profits as well as for redemption, the appeal must be stamped for both the reliefs. *Ram Chand v. Bhagwan Das*, 1935 Pesh. 8.

**3. Appeal against preliminary decree alone where a final decree had been passed.**—The plaintiff obtained a preliminary decree in a redemption suit. Then a final decree was passed requiring the plaintiffs to pay a sum of Rs. 8,000. The plaintiffs appealed against the preliminary decree only, on a court-fee stamp of Rs. 10 although their objection was about the amount which they were decreed to pay by the final decree. It was held that inasmuch as the dates permitted the appellant to challenge both the preliminary and the final decree within the time allowed by law for an appeal against the preliminary decree the court could not permit them to avoid the provisions of the Court-Fees Act by getting what might or might not be an effective reversal of the final decree by a circuitous method when the direct method was open to them. *Dattaya Ramachandra v. Ajimuddin*, 18 Bom. L. R. 76.

**4. Appeals in a suit where two preliminary decrees were passed.**—This is an instance of rather an unusual case. The

probably the Austro-Hungarian treaty of 1868,<sup>1</sup> and any other treaties giving most favoured nation treatment in matters of navigation. In 1907, therefore, a new statement was made in favour of reserving the coasting trade, the United Kingdom dissenting so far as the proposal to treat inter-imperial trade as coasting trade was concerned. But the Conference led to obtaining power in 1907-8 to withdraw from the treaties with Paraguay, Liberia, and Egypt by giving a year's notice for any of the Dominions. The rule accordingly is now absolute, that in any negotiation for concluding a treaty an effort is made to secure for the Dominions and India the privilege of separate adherence and separate withdrawal. This was secured in the case of Nicaragua, Rumania, and Bulgaria in 1905 ; of Servia in 1907 ; of Montenegro and Honduras in 1910 ; and of Japan in 1911, and thenceforward with absolute regularity. A special favour has also been secured for the Dominions in some recent treaties by providing that the products of the Dominions shall be entitled to most favoured nation treatment in the foreign country concerned, so long as the Dominion gives such treatment to the foreign country, a curious and one-sided arrangement.<sup>2</sup> Progress has also been made, under a further resolution of the Imperial Conference in 1911, in ridding the Dominions of the possibility of being bound by old treaties ; thus in 1911 Sweden accepted the right of separate termination by the Dominions ; France, Denmark, and Colombia in 1912, Norway and Costa Rica in 1913, and Switzerland in 1914. But Italy remained obdurate, despite the anxiety of Australia which displayed a remarkable eagerness to rid herself of treaty obligations to secure the right to retire.<sup>3</sup> But with minor exceptions the position now is clear that the Dominions are bound by no treaties from which they cannot retire, and with the lapsing of the older treaties through the war and other causes are bound by very few treaties to which they have not fully subscribed.<sup>4</sup>

<sup>1</sup> Now terminated for both countries. See the treaties with Austria of 1924 and Hungary of 1926 for the present relations.

<sup>2</sup> e. g. in the treaty with Siam of 1925 ; Germany declined to adopt this. In 1925 Canada by Act gave Finland most favoured nation treatment in order to obtain the advantage of the treaty.

<sup>3</sup> The objections to termination of the whole treaty precluded such action.

<sup>4</sup> As regards Persia an additional compact was made in 1920, and under it Canada and Australia withdrew in 1922.

**8. Appeal against decree for improvements.**—In a suit for redemption of a *Kanoni* the plaintiff obtained a decree subject to payment of the value of improvements. The plaintiff appealed against the value allowed for improvements. It was held that the court-fee payable on the appeal must be determined in accordance with the value of the improvements which the appellant seeks to avoid. *Tiruvengalath Paidal Nayar v. Emperor*, 22 I. C. 624=1926 Mad. 225.

**9. Appeal for relief under the Dekhan Agriculturists Relief Act.**—An appeal by a defendant from a decree in a mortgage suit claiming relief under the Dekhan Agriculturists Relief Act is covered by cl. (ix). *Mahomed Ali v. Akbar Ali*, 36 Bom. L. R. 1234=1935 Bom. 69.

## PARAGRAPH X: SUITS FOR SPECIFIC PERFORMANCE.

**Application.**—This clause provides for suits for specific performance for the enforcement of a contract of (1) sale, (2) mortgage, (3) lease, and (4) an award.

**Clause (a). Contract of sale.**—Where the suit is one for specific performance of a contract of sale, the fee payable is according to the amount of the consideration. *Shiv Dial v. Shiv Ram Rao*, 1928 Lah. 635=111 I. C. 72.

**Suit for specific performance alone.**—A suit praying for specific performance of a contract of sale, pure and simple, without the addition of any other relief falls within this clause. *Nahal Singh v. Seva Ram*, 38 A. 292. This usually happens in cases where, by virtue of the agreement to sell or otherwise the plaintiff is already in possession of the property contracted to be purchased by him and the plaintiff need therefore ask only for the sole relief of specific performance in order to get a legal title to the property. See *Fakir Chand v. Ram Dutt*, 5 L. 75=80 I. C. 953=1924 Lah. 439

**Specific performance coupled with other reliefs.**—There is a conflict of authorities as to the fee leviable where the suit is one for specific performance of a contract of sale, coupled with a relief for recovery of possession of the property. At the outset it has to be noticed that, strictly speaking, it is only after the execution of a conveyance, the plaintiff gets the title to the property, in view of the provision in s. 54 of the Transfer of Property Act (IV of 1882) that a contract for the sale of immoveable property does not of itself create an interest in such property. A contractee for the purchase of immoveable property has therefore only an inchoate right to get a conveyance executed in his favour and it is only on the execution of a proper conveyance that his title to the property matures. Consequently, the decision in *Narayana Kavirajan v. Kandaswami Gounder*, 22 M. 247, where it was held that a plaintiff in a suit for

number of privileges are conferred on British subjects as such ; these include acquisition and disposal of movable and immovable property on a most favoured nation basis as regards acquisition and on national conditions as regards disposal and inheritance ; the export under national conditions of their property ; freedom of entry and residence on most favoured nation terms ; similar freedom as to exercise of professions, &c. ; exemption from compulsory military service, from administrative, municipal, and judicial functions save as regards juries ; from pecuniary contribution in lieu of service and from all military exactions other than those connected with land or compulsory billeting. On the other hand there are conditions affecting goods imported from one country into the other, or exported from one country to the other, and the treatment of vessels. These, the treaty makes clear, will not apply to those parts of the Empire which do not adhere to the treaty. On the other hand, there is no discrimination as regards the right of consular officers, if the laws permit, to represent non-resident heirs, or as regards protection for patents, trade marks, and designs. It may be granted that there is some unfairness in stipulations, which, e.g. open Japan to Australians, but close the Commonwealth to Japanese. But the matter is obviously difficult. It is not easy to find a mark which would characterize a British subject as definitely settled in a Dominion, though the Dominion criteria of nationality or citizenship might be adopted, and in any case if foreign countries object to the system, which they have a perfect right to do, it is for them to take action. Clearly the United Kingdom could make no objection if they declined to accept the theory that British subjects connected with a Dominion which does not adhere to a treaty can have any rights under it, and common sense would suggest that, if these privileges are to be claimed, they ought to be expressly conferred in such a manner as to be free from any doubt as to their application. The matter may at any time have to be settled by arbitration ; thus under the treaty with Siam of 14 July 1925<sup>1</sup> the Permanent Court of International Justice may at any time be called on to lay down what is the precise position when the treaty does not apply to a Dominion

14 Dec. 1923 (Cmd. 2243) ; Spain, 31 Oct. 1922 (Cmd. 2188) ; Estonia, 18 Jan. 1926 (Cmd. 2709).

<sup>1</sup> *Parl. Pap.*, Cmd. 2643.

a clear indication that the statutory obligation under s. 55 of the Transfer of Property Act is not to flow from the contract. See also *Kundan v. Anand Sarup*, 73 I. C. 709=1923 Lah. 456.

The converse view is to hold the relief for specific performance to be subsidiary to that of possession. Where the plaintiff sued for specific performance and possession it was held in *Madan Mohan v. Gaja Prasad*, 14 C. L. J. 159=11 I. C. 228, that the suit was in substance one for possession of the property and ought to be valued under clause v of the Act according to the value of the subject-matter of the suit. This was followed in *Nathekhan v. Mahomad Khan*, 46 I. C. 534 (Pun.) It was observed: "The question of the court-fee payable in such cases does not appear to be by any means clear. The main relief asked is for specific performance of the contract by execution of a sale deed and the claim for possession appears to be subsidiary to the main relief." This was again followed in *Gopal Das v. Paramanund*, 60 I. C. 512 (Pun.)

But these decisions have been fully discussed and dissented from in *Sundaramanujam v. Sivalingam*, 47 M. 150=1923 Mad. 360. The Madras decision was followed in *Sivdayal v. Sivaram Das*, 1928 Lah. 635. This was a suit for specific performance of contract of sale and for possession of land. Following the decision of *Fakir Chand v. Ramdatt*, 5 Lah. 75=1924 Lah. 349 and *Sundaramanujam v. Sivalingam Pillai*, 47 M. 150=1924 Mad. 360, it was held that in a suit for specific performance of a contract for sale of land the proper valuation is the price agreed to be paid. The earlier cases in Lahore *Gopal v. Paramanand*, 60 I. C. 512 and *Nathe Khan v. Mohomed Khan*, 45 I. C. 534 were not approved. The PATNA High Court follows the view of the CALCUTTA High Court and holds in *Ram Bahadur v. Banwarilal*, 118 I. C. 134=1929 Pat. 642, that a suit for specific performance of a contract to sell immoveable property and for recovery of possession of the same should be valued under s. 7 cl. v.

In the above said two sets of cases there is a divergence of views as to whether the relief for specific performance is to be subordinated to the relief for possession and *vice versa*. The view of the High Courts of ALLAHABAD, MADRAS, and LAHORE is to the effect that such suits fall under x (a), while the view of the High Courts of CALCUTTA and PATNA is that clause v is applicable.

**Qudh.**—The second set of cases arises where the second relief sought is not treated as merged in the other, but both construed to be independent reliefs where commulative fee is leviable. This is the view taken in *Ram Niti v. Bulkaram Singh*, 23 O. C. 388=60 I. C. 959. In that decision the earlier view of the Madras High Court in *Krishnesam v. Sundarappayyar*, 18 M. 415 was approved of and the decision of the Calcutta High Court in *Madan Mohan v. Gaja Prasad*, 14 C. L. J. 159=11 I. C. 228, was dissented from. There is further a fuller criticism of the decision of the Allahabad High Court. *Nihal Singh v. Seva*



Dominions special advantages in general treaties, Newfoundland then obtaining favoured treatment for her codfish. Great efforts were made in the Anglo-Portuguese treaty<sup>1</sup> to see that nothing was done by way of concession to Portugal regarding her wine to injure the Dominion wine industry, and in connexion with all new commercial negotiations, in addition to securing the privilege of adherence and withdrawal, the Dominions are consulted as to their interests, while the Board of Trade has included representatives of Dominion interests in the Advisory Committee.

### § 3. *Separate Commercial Negotiations with regard to the Dominions*

It was from the first obvious that nothing in the way of general treaties could be adequate to meet the special needs of the Dominions, and that it was only right that special conventions should be arranged for their benefit. Further, it was obvious that in negotiations for this end the association of Dominion negotiators must be essential. The most brilliant early instance of such co-operation was that of 1854 when Lord Elgin at Washington succeeded in securing, in close co-operation with Canadian statesmen, the conclusion of the famous reciprocity treaty, which at the time proved of incalculable value to Canada as helping over the period of difficulty caused by the British policy of free trade and the cesser of all preferences to the Dominions. In 1865<sup>2</sup> the Imperial Government was ready to associate Canadian representatives in further negotiations for a new instrument to replace that of 1854, which the United States had determined to be rid of as too favourable to Canada, but nothing resulted owing to American reluctance. In 1874 Mr. G. Brown fruitlessly discussed possibilities at Washington, while in 1871 Sir J. Macdonald in association with a British delegation had achieved the settlement of the treaty of Washington. In 1877-84 Sir A. Galt and Sir C. Tupper made various efforts with the aid of the Imperial Government to come to terms with France and Spain. It was originally laid down by

<sup>1</sup> Cf. 5 Geo. V, c. 1. Newfoundland adhered in 1916 to the treaty of 1914. Similarly as regards the Spanish treaty of 31 Oct. 1922 (*Parl. Pap.*, Cmd. 2188).

<sup>2</sup> *Parl. Pap.*, C. 703, pp. 8 ff.; 8 Feb. 1867, I, p. 13; Lewis, *George Brown*, p. 227.

in 60 I. C. 959 seems to be the proper view. But it is submitted that the view therein expressed cannot be made to apply indiscriminately to each and every case where the dual relief is prayed for. For instance in *Nihal Singh v. Seva Ram*, 38 A. 292, the plaintiffs alleged that defendants 2 and 3 having contracted to sell certain property to them and received part of the price, thereafter sold the same property to first defendant who had notice of the agreement with the plaintiffs and they asked (1) that the defendants 2 and 3 might be compelled to complete the sale to the plaintiffs and (2) for possession of the property. It was held that the suit was really one for specific performance of a contract and the court-fee thereon was assessable under s. 7 clause x of the Act. See also *Krishnaswami v. Sundarapayyar*, 18 M. 415.

For purposes of court-fee under s. 7 para x an exchange is to be dealt with as a sale. *Kundan Lal v. Anund Sarup*, 1923 Lah. 456. But the correctness of the decision is perhaps open to question. Section 54, T. P. Act, defines a sale as a transfer of ownership in exchange for a price paid or promised. For the meaning of the word "price" see 2 Luck. 575. It must consist of money and where it consists of any other thing it is not a sale. 1927 Oudh 204. Consequently an exchange could not be deemed to be a mutual sale. And further the value of the property could not be ascertained from the deed of exchange.

**Summary.**—The net result of the several conflicting decisions and views above may be stated thus. Where the plaintiff sues for specific performance and possession, it has first of all to be determined as to whether there is any real controversy as regards the prayer for possession. If there is, then a cumulative fee is payable under paragraphs (x) and (v). If there is no such controversy, then the relief as to possession is really auxiliary to that of specific performance. This occurs in most cases where the suit is against the contractee for possession. In such cases there is either a contract to deliver possession or such a contract is implied under s. 55 (f) of the Transfer of Property Act in the absence of a contract to the contrary. Thus in all cases, where there is no contract to the contrary, the plaintiff's suit for specific performance and possession is in substance only one for specific performance and in cases where there is a contract to the contrary it is obvious that there would be no suit for the additional relief of possession along with that of specific performance. Much of the controversy and divergence of views could well have been avoided if the intention of the legislature was expressed with greater clearness in para (x) to the effect that it applies also to cases where the additional relief of possession is claimed, in cases covered by s. 55 of the Transfer of Property Act which in any event must be read along with para x (a). The necessity for such clearness is all the more imperative in view of the existence of clause (v) which is wide enough to cover all cases wherein the relief of possession is sought.

Government if that Government had been willing to consider seriously the conclusion of a convention and to discuss details. In 1907,<sup>1</sup> however, and again in 1909, a slight change occurred. The Canadian ministers who desired to negotiate with France expressed the view that it was hardly necessary that they should actually work along with the British representative at Paris, who could only act formally, and Sir E. Grey willingly consented to the absence of such a representative at the discussions, subject to the conclusion of the agreement arrived at formally by the Ambassador as well as the Canadian delegates and subject always to the same control over the negotiation by the British Government as would have been exercised on the former basis. This was readily consented to by Sir W. Laurier, the understanding being that, before the treaty was signed, the Imperial as well as the Dominion Governments should have all its details before them and approve its terms, and both the treaties of 1907 and 1909, the latter necessitated by the refusal of France to accept the former treaty unmodified, were dealt with in this way. The model set has been adopted since as proper and convenient, notably in the treaty with Italy regarding Canadian trade signed at London by Canadian representatives and the Foreign Secretary in 1923.

The principles regulating such treaties were laid down formally in 1865<sup>2</sup> reaffirming in the main earlier usage, and after the Ottawa Conference had asserted the propriety of such steps,<sup>3</sup> they were reasserted in a dispatch from Lord Ripon of 28 June 1895.<sup>4</sup> In the first place, no foreign power must be offered tariff concessions which were not to be immediately granted to all other foreign powers entitled under treaty to most favoured nation treatment in the colony. The propriety of this condition was never doubted, but in view of the final responsibility for foreign affairs resting on the Imperial Government it was intimated that satisfactory arrangements as to legislation to provide for this result must be made before any treaty could be ratified by the Crown. Secondly, any concession made to a foreign state must be extended forthwith and unconditionally to every part of the British dominions, on the score that no

<sup>1</sup> *Parl. Pap.*, H. C. 129, 1910. Cf. *Canada Commons Deb.*, 1907-8, pp. 1265, 1384, 3517-22.

<sup>2</sup> *Parl. Pap.*, C. 703.

<sup>3</sup> *Parl. Pap.*, C. 7553, pp. 53 ff., 147 ff.

<sup>4</sup> *Ibid.*, C. 7824.

dule to the Civil Procedure Code is no bar to a regular suit to enforce an award. Under the Code of 1892, s. 525, it was held that a party interested in an award may at his option avail himself of the summary remedy provided by that section to enforce the award or he may bring a regular suit to enforce the award, 20 M. 490. There is nothing in the Code of 1908 to preclude such a suit. See s. 89 of the C. P. C. Consequently either because an application is out of time or otherwise, a suit may be filed for which the period of limitation is that under Art. 113. There is a difference of opinion as to whether an award is a contract at all. See 51 I. C. 999. "Though an award springs from an agreement it is not itself a contract and hence a suit to enforce an award is not a suit for specific performance of a contract." *Bhagbari v. Behary*, 33 C. 881; *Sornavalli v. Muthayya*, 23 M. 593. Of course there are decisions under the Limitation Act and the question arises whether Art. 113 or 120 applied to such suits for specific performance. But so far as the Court-Fees Act is concerned the paragraph relates to suits for specific performance though it might be noticed that while in respect of the clauses (a), (b) and (c) viz., a sale mortgage and a lease the word "contract" is used, that word is omitted in clause (d) relating to an "award" for obvious reasons. The only point noticeable is that where an application to file the award is not made under paragraph 20 of Schedule II of the C. P. C., in which case the fee is leviable only under Art. 1 Sch. II of the Court-Fees Act, but a suit is filed, the fee is leviable under this paragraph according to the amount or value of the property in dispute.

**Valuation for jurisdiction.**—Under s. 8 of the Suits Valuation Act, the valuation of suits for court-fees and jurisdiction is the same except in the cases therein excepted. And suits under paragraph x clause (d) fall within the category of excepted suits. Consequently the valuation of suits under clauses (a), (b) and (c) of this paragraph is the same as that for court-fees but in the case of suits under clause (d) the value may be different. See *Syed Ashfaq Hussain v. Syed Bunyad Hussain*, 77 I. C. 874 = 1923 Oudh 252 (case of contract of sale); *Sailendra Nath Mitra v. Ramcharan*, 65 I. C. 268 (contract to lease).

## PARAGRAPH XI SUITS BETWEEN LANDLORD AND TENANT.

**Suits by landlord against tenant and vice versa.**

**Suits by landlord** are dealt with in sub-clauses (a), (b) and (cc).

**Suits by tenant** are dealt with in sub-clauses (c), (d), (e) and (f).

**Scope of the paragraph.**—The primary requisite for its application is the existence of the general relationship of landlord and tenant. A general suit for possession for instance based on title and not on a contract of tenancy will have to be brought under paragraph (a) instead of under clause (cc) of the paragraph which will apply only

negotiating treaties, on the score that it must result in breaking up the Empire, an outcome desired neither by the colonies nor by the mother country. The proposal thus negatived has been long mooted in the colonies but had never come to a decisive issue, involving as it did the wider nature of Imperial unity. But Canada, which had never accepted proposals<sup>1</sup> for a separate treaty power, inaugurated in 1910 a very interesting development.<sup>2</sup> The tariff war between Germany and Canada had been carried on by both sides on the basis of refusing tariff concessions and increasing the normal rates. The German Government was losing heavily as well as the Canadian, and an agreement was informally arranged through the Consul-General of Germany for a cessation of the struggle. There was no treaty, but by Order in Council of 15 February 1910 under the *Customs Tariff*, 1907, the Canadian Government, cancelling the surtax imposed by Order in Council of 28 November 1903, restored Germany to the normal position of a foreign power, while Germany admitted Canada to her normal tariff. A further development was followed by an arrangement with Italy, equally informally concluded through the Royal Consul, and carried out by Order in Council of 7 June 1910, while at the same time were made gratuitously concessions of the same character to Belgium and Holland, whose Consuls had represented their desire to receive consideration. These arrangements were all approved by the Imperial Government, and the Canadian Government readily recognized that, if anything more formal were desired, treaty form should be resorted to. Further, after negotiations between Canadian ministers and United States representatives, an informal agreement was come to under which Canada received certain concessions in the form of the minimum Payne-Aldrich tariff in return for concessions on thirteen minor articles to the United States, carried out by lowering the duties in question generally (c. 16). The United States claim was a quaint one; the minimum tariff was denied to powers discriminating against the United States, and the argument was adduced that the French agreement of 1907-9 might be treated in this light.

No great notice was taken of the new departure in England, but from the discussions of 1910 came a very important con-

<sup>1</sup> Cf. Skelton, *Sir Wilfrid Laurier*, i. 362 ff.

<sup>2</sup> Ibid. ii. 365 ff.

**Clause (b).**

This refers to a suit by the landlord for the enhancement of the rent payable by a tenant. In Madras s. 24 of the Madras Estates Land Act provides that the rent of a ryot shall not be enhanced except as provided in the Act and provision is made in s. 30, to the effect that where for any land in his holding a ryot pays a money rent the landholder may institute a suit before the Collector to enhance the rent on one or more of the grounds set out in the section.

The words "having a right of occupancy" in this clause connote actual and physical possession. Hence a suit against a ryot under s. 30 of the Madras Estates Land Act is chargeable under this clause. But this clause does not apply to a suit against a mere tenure-holder, who has no right of occupancy, for enhancement of rent, which is governed by Sch. I, Art. I. *Prasannadeb v. Purna Chandra*, 61 Cal. 513 = 38 C. W. N. 527 = 1934 Cal. 674. See also commentary under cl. (e), *infra*.

Court-fees on plaints in suits under s. 30 of Madras Estates Land Act has not been remitted by the Government.

**Clause (c).**

Section 55 of the Madras Estates Land Act provides for such class of suits.

**Clause (cc).**

This clause was inserted by Act VI of 1905. This refers to a suit by a landlord for the recovery of the property from a tenant. As already observed where the basis is the relationship of a landlord and tenant, the suit falls not under para (v) but under this clause. The plaintiff's suit for possession from a tenant may be where the tenancy has terminated or when the plaintiff seeks to enforce his right of re-entry on account of forfeiture incurred by a tenant on account of some breach of covenant. See s. 111 of the Transfer of Property Act (IV of 1882). Where a suit is valued under this clause, the only issues that arise are whether the lease is true and whether the same has been validly terminated entitling the plaintiff to eject. The question of plaintiff's title to the property from which the defendant is sought to be ejected is irrelevant to the enquiry. Compare suits under s. 9 of the Specific Relief Act where also the title is not the basis of the claim but one of the incidents of ownership, *viz.*, possession. Consequently it follows where the plaintiff elects to have a second string to his bow and elects to base his suit on a dual footing *viz.* both on lease and title, the valuation is according to the larger of the two reliefs, one calculated under this clause and the other under paragraph (v) of the section.

Of course it is only the allegations in the plaint that have to be looked to for the computation of the court-fee payable. Merely because the defendant raises the plea that he is an occupancy ryot

early passage of the Bill, and the Government, after the Imperial Conference was over, properly dissolved to seek a mandate. This was decisively refused, a majority of forty-one being changed into a minority of forty-five after fifteen years of Liberal rule.<sup>1</sup> The maritime provinces and British Columbia were largely actuated by British sentiment, Quebec was irritated, on the other hand, by the Government's alleged Imperialism in its naval policy, while the western prairie provinces with their strong American elements, and the obvious advantages in obtaining free trade in agricultural products, went strongly for the Liberals. The chief responsibility for the fiasco rested with the President, who in his turn was actuated by the desire to afford relief from the very high tariff of 1909, and to excuse his action by insisting on its political possibilities.

The outcome of this new diplomacy was not, it is clear, such as to encourage further excursions into a course of action which gave the Imperial Government or other parts of the Empire no opportunity of representing their interests to the Dominion when negotiating. On the other hand, a new departure in 1911-12 opened a fresh possibility of Dominion action. Up to that time there had been often informal conferences in which even Australian States and Canadian provinces had taken part,<sup>2</sup> but the results of these conferences were merely advisory and had no treaty effect. When this was intended, the United Kingdom was represented alone, and Dominion interests were secured by the presence in the British delegation of Dominion nominees, who took part in the final agreement, the interests of the Dominion being secured, if required, by separate arrangements for adherence and withdrawal. Thus in June and July 1911 a conference between the United Kingdom, the United States, Japan, and Russia reached an agreement on the protection of the fur seals, Canada being represented by Sir J. Pope. On the other hand, none of the Dominions took the trouble to be represented on the International Opium Conference of January 1912, which, therefore, secured the possibility of separate adherence and withdrawal.<sup>3</sup> In July 1911 a new

<sup>1</sup> A turnover of 133 Liberals, 3 Independents, and 85 Conservatives in 1908 to 88 Liberals and 133 Conservatives and Nationalists. Cf. Skelton, ii. 380 ff.

<sup>2</sup> See, e. g. *Parl. Pap.*, Cd. 6863, p. 7; Cd. 7507, pp. 8, 9.

<sup>3</sup> *Parl. Pap.*, Cd. 6038.

intention of s. 116 is that the lessee holding over with the landlord's mere consent has still a lease". *The Bengal National Bank v. Raja Janaki Nath*, 54 C. 813=104 I. C. 484=1927 Cal. 725. The words "including a tenant holding over after the determination of the tenancy" are sufficient to indicate that the provision is meant to cover even those cases where a person was a tenant before but his tenancy has been determined since. *Telanga Marandi Majhi v. Chandra Mohan Singh*, 1933 Pat. 664. See also *Ramcharan Singh v. Sheo Dutt Singh*, 2 Pat. 260=74 I. C. 619=1923 Pat. 380; *Ram Lal Sahu v. Mt. Bibi Shara*, 1935 Pat. 90. The word "tenant" in this clause includes a person who could be properly described as such immediately before the institution of the suit but whose tenancy has been terminated by his landlord. But the difficulty does not at all arise where one looks at the cause of action. If it is one based on a contract of tenancy and termination thereof then the suit clearly falls under clause (cc). A person who entered by a lawful demise or title and after that has ceased, wrongfully continues in possession without the assent or dissent of the landlord is a "tenant on sufferance." *Kamakhya v. Khalik Ahmad*, 102 I. C. 821=1927 Pat. 305. A suit to eject a person who was a tenant and whose tenancy was terminated but who still continues to be in possession of the property falls under this clause. *Narayan v. Thukaram*, 74 I. C. 93=1923 Nag. 310; *Vithaldas v. Ghulam Ahmad*, 99 I. C. 438=1927 Nag. 156. Where it appeared that the father of the defendant had during his lifetime held over the land for number of years after the expiration of the lease, a suit in ejectment against the son claiming to be on the land on payment of rent would fall under this clause as the son cannot be held to be in the position of a trespasser on the land, against whom the plaintiff has to proceed by way of getting his title established in a properly constituted suit. *Asutosh Pramanik v. Jihandhan Genguly*, 1933 Cal. 822.

But when the tenancy that had existed and had been held by the defendant had been terminated and the suit was one for ejectment of the defendant *as a trespasser* it was held that clause (cc) did not apply. *Govinda Ram v. Dhulu Pala Dutt*, 1928 Cal. 753=32 C. W. N. 160.

**Tenant claiming occupancy rights.**—Where plaintiff, an inamdar, claimed that he was entitled to both warams in the inam land and prayed for a decree establishing his right and removing the defendants tenants from possession on the footing that he was entitled to eject them after due notice by virtue of his title to the kudivaram, and the defendants did not dispute the plaintiff's right to melvaram but asserted occupancy right in the land, it was held that court-fee was payable under S. 7 cl. (iv) (c) and not under this clause. *In re Sobhanadri Rao Pantulu*, 140 I. C. 462=36 L. W. 701=63 M. L. J. 759. But see *Punjamurthulu v. Sreeramulu*, 52 M. L. J. 100=1927 Mad. 331=99 I. C. 981. In a recent case in Madras the decision in 63 M. L. J. 759 above referred to has been dissented from, the court holding that such a suit falls under s. 7 cl. v. and not cl. iv (c), court-fee



prevail.<sup>1</sup> It must, of course, be remembered that the grant of full powers by the King is advised by the Imperial Government and that the ratification is equally in the hands of the Imperial Government, so that the fundamental unity of the Crown remains untouched.

#### § 4. *Other Negotiations affecting the Dominions up to 1914*

The position of the Colonies in regard to other matters of foreign negotiation during the period up to the Great War was less advanced than as regard commercial issues. The Colonies were recognized throughout as absolutely without diplomatic status of any sort. Complaints against their action must be made to the Imperial Government and only informally by Consuls, as in the case of the riots in Vancouver in 1907, when the Japanese and Chinese Governments addressed official representations to the Imperial Government, while their consular officers were in touch with the Dominion Government, and Sir W. Laurier with the Governor-General's approval sent an expression of Canadian regret through the Ambassador at Tokio to the Japanese Government.<sup>2</sup> Consular officers in the Dominions were never admitted to diplomatic status; they were merely regarded in their correct aspect as commercial agents, though Sir W. Laurier, after his commercial negotiations with them in 1910, was willing to hold that they deserved semi-diplomatic status, and might be accorded precedence. But he did not bring this up at the Imperial Conference of 1911, and efforts of Consuls in Australia and the Union of South Africa to claim the private *entrée* at the Governor-General's functions were unsuccessful. The approval of the Dominion Governments was inevitably asked for in each case of any save *consuls de carrière*, who naturally could not be obnoxious to the local governments, but the official *exequaturs* were Imperial. Needless to say, diplomatic agents were not sent to the Colonies, nor were they represented abroad by such agents, as opposed to trade commissioners or emigration agents.

<sup>1</sup> Tupper, *Recollections of Sixty Years*, p. 175.

<sup>2</sup> *Canadian Annual Review*, 1907, p. 391. Cf. Morris's *Memoir*, pp. 204 ff., 219 f., for the exaggerated view of Mr. Higinbotham as regards Imperial responsibility. For Consuls, see Canada, *Commons Deb.*, 1909-10, pp. 853 ff.; 1910-11, pp. 973 ff.

'*Illegally ejected*' means ejected nominally in conformity with, but really, in contravention of the provisions of law. *Sundar Lal v. Jassie Cardline Murray*, 16 I. C. 963-

### Clause (f).

This applies to suits for abatement of rent by a tenant against landlord. It is provided by s. 38 Madras Estates Land Act that where for any land in his holding an occupancy ryot pays a money rent, he may institute a suit before the Collector for the reduction of this rent on one or the other several grounds therein mentioned. Plaints in suits under s. 38 of the Madras Estates Land Act have not been exempted from court-fee.

When the suit is for the abatement of the amount of periodical payment by the plaintiff to the defendant, between whom and the plaintiff there is no relationship of landlord and tenant court-fee is not leviable under this clause but as for a mere declaration under Art. 17, Sch. II. *Rayarappan Kutti Nambiar v. Chathathut Kutti Nambiar*, 46 M. L. J. 377.

**Year.**—It has been defined in s. 3 (38) of the Madras General Clauses Act I of 1891 as a year reckoned according to the British calendar. It has been held to denote a period of 365 days reckoning backwards from the date of presentation of the plaint. *Ghasi Ram v. Har Govind*, 28 A. 411.

**Suits not falling under the clause—Assessment of fair and equitable rent.**—There is no particular provision under the Court-Fees Act applicable to a suit for assessment of fair and equitable rent and therefore *ad valorem* court-fee has to be paid under Sch. I, Art. 1 of the Act. *Dhanukdhari v. Mani*, 6 Pat. 17=100 I. C. 913=1923 Pat. 123.

**Commutation of rent.**—In an appeal by a landlord where he stamped his memorandum on an amount being the difference between the rate claimed by the tenant and the rate fixed by court, it was held that Article 17 (ii) or (vi) of Sch. II applied as this class of suit was not provided for in this paragraph. *Sonadatti Kalai v. Veerappa Goundan*, 78 I. C. 968=46 M. L. J. 450=1924 Mad. 623=19 L. W. 629. Section 40 of the Madras Estates Land Act provides for suits for commutation of rent. The Government has not remitted the court-fee in the case of such suits.

**Suit to contest the landholder's right to sell—Appeal.**—In *V. Aiyaswami Aiyar v. The District Board of Tanjore*, 52 M. 972=57 M. L. J. 510=1930 Mad. 43, the question for consideration was as to the amount of court-fee payable in respect of a memorandum of second appeal preferred by a ryot in a suit filed by him under s. 112 of the Estates Land Act. The ryot contested the landholder's right to sell his holding under s. 112 and one of the reasons given by him was that there was no proper notice. In second appeal the ryot paid a fixed fee of Rs. 10 under Art. 17-B Sch. II of the Court-Fees Act as amended by Act V of 1922. Under the notification issued by the Govern-

arbitration. As Newfoundland declined to recognize the arbitration as justifying the *modus vivendi*, the Imperial Government issued an Order in Council of 9 September, which forbade in effect the operation of the Act of 1905, and gave the naval officers on the station the obligation of preventing any effort to defeat the Order in Council. This had Imperial statutory validity under the Act of 1819<sup>1</sup> passed to carry out the Anglo-American treaty of 1818, under which the fishery rights of United States subjects existed. The effect of the Order in Council was excellent; Canada recognized that the action taken was essential in the interests of her own relations with the United States, and the subject was not even raised in the House of Commons. Matters thereafter proceeded smoothly, and, as the result of the arbitration in which British counsels assisted to the best of their ability the cases made by Canada and Newfoundland, a Hague award very much in favour of the two Dominion Governments was achieved in 1910, and outstanding points cleared up in a Convention of 1912.

Canada showed more gravity and sense of responsibility throughout her transactions<sup>2</sup> with the Imperial Government, to whose intervention she owed in part the reciprocity treaty of 1854. Her interests and those of the United Kingdom were inextricably interwoven in the issues which were settled for the time being at Washington in 1871. Sir J. Macdonald<sup>3</sup> unquestionably thought that the British negotiators were indifferent to Dominion interests, while he was unable to resign, as he feared that even worse terms might be settled over his head. The British Government on the other hand had the *Alabama* claims to consider, and the serious friction of the years from 1866-70 when efforts had been necessary to maintain by the presence of an adequate force the respect due by American fishermen to the rights of Canada in her own fisheries. Canada again demanded recompense for the Fenian raids which had

<sup>1</sup> See 59 Geo. III, c. 38.

<sup>2</sup> The old accusations of sacrifice of Canadian interests as regards the Maine boundary in 1842 and the British Columbia boundary in 1846 should be largely discounted; see *United Empire*, ii. 683 ff.; Macphail, *Essays in Politics*, pp. 247 ff.; Henderson, *American Diplomatic Questions*; W. F. Ganong, *The Evol. of the Boundaries of New Brunswick*.

<sup>3</sup> Pope, *Sir John Macdonald*, ii. 104 ff.; Ewart, *The Kingdom Papers*, i. 65 ff.; contrast Tupper, *Recollections*, pp. 371, 391.

on (a) Kanam, (b) leases and (c) sometimes, title to immoveable property.

(a) **Kanam.**—For want of a special provision in the Court-Fees Act for a suit for recovery of possession of property held on kanam, such a suit is treated as an ordinary suit for redemption of a mortgage and valued under s. 7 cl. ix of the Act at the principal amount of the kanam, and this practice has obtained judicial recognition. But a kanam is something more than a mere usufructuary mortgage. It is also a lease. It is even something more than a mortgage and lease combined, inasmuch as the kanamdar is entitled to value of improvements on eviction—a feature not found in ordinary mortgages or leases. Further, unlike the mortgage amounts in ordinary mortgages, the kanam amount does not in most cases bear any proportion to the value of the property. It is usual to find kanam of Rs. 5, while the property may be worth thousands of rupees. Even one year's rent of the property would often exceed the kanam amount. Kanams of even Re. 1 are not rare. This is due to historic or other special reasons. Not infrequently at the end of 12 years, the landlord renews the kanam to the kanamdar or his heirs, and the value of the accumulated improvements made—trees grown and buildings constructed—by them will be worth several times the value of the property as it was when first demised to the kanamdar. Again, at the time of the original kanam and at the time of its renewal, the landlord receives as consideration from the kanamdar not merely the kanam amount secured on the property but frequently also a premium called 'manusham'. The value of a suit for possession of property on kanam is therefore often illusory or nominal and is no index of the time and labour necessary for its disposal. As in a suit for redemption of kanam in the Civil Courts, the Registration Department till now charged fees for registration of kanam documents only on the amount of the kanam. But under the rule-making power conferred by s. 78 of the Registration Act, the Government have now, with effect from 1st January 1932, by G. O. Mis. No. 231 Law (Registration) published in the Fort St. George Gazette of 9th December 1931, made a new rule as follows:—"In the case of a kanam deed, fee shall be levied on the total consideration, *viz.*, the aggregate of the amount consisting of the advance, the premium or the present called 'manusham' in North Malabar, and 'avakasam' in South Malabar, the annual rent reserved, and the ascertained amount of compensation if any, for improvements." A kanam is a mortgage of so anomalous a nature that a suit for redemption of it does not admit of being satisfactorily valued and it is desirable that the High Court should under its powers under s. 9 of the Suits Valuation Act make rules directing its proper valuation. With regard to another class of suits in Malabar, *viz.*, suits for removal of a karnavan of a tarwad the High Court has once before exercised this rule-making power under section 9. *Vide* notification in Fort St. George Gazette dated 3rd March 1903, Part II, page 368.

Lord Herschell, though in 1897 the at first sight diverse policy of Imperial preference had been adopted. The Commission<sup>1</sup> came to a tentative agreement on trade, but broke down on the issue of the Alaskan boundary, and the Canadian Government eschewed for a time further consideration. But the help which the British Government gave Canada in the period from 1890-4 when Canada had unswerving support in the vexed issue of the United States claim to make the Behring Sea<sup>2</sup> a *mare clausum*, or at least to claim property in the seals of the islands which she owned even when they were on the open sea, was obliterated by the deplorable fiasco of the Alaskan Boundary arbitration.<sup>3</sup> The arrangement by which there were to be three arbitrators on each side was bad, but when the United States selected three zealous partisans who were committed to the United States case as 'impartial jurists of repute', it was clearly colossal folly on the part of the British and Canadian Governments to stick to their first selection. Canada was given the fullest opportunity to change the choice, but flung it away, and, when the English Lord Chief Justice allowed himself with deplorable folly to be induced by very poor arguments and presumably by considerations of friendship to award the United States more than she could possibly have had a right to, it is not surprising that even Sir W. Laurier on 23 October 1903 re-echoed some of the old desire for the treaty power for Canada which had been advocated by Mr. Blake on 3 October 1874 and in 1882, and that it was not until the advent to office of the Liberal Government in the United Kingdom that cordiality was restored. The presence of Mr. Bryce at Washington was marked by great success in treaty making, and on 15 December 1909 in the House of Commons Sir W. Laurier emphatically declared his dissent from the idea of sending a Canadian attaché to Washington on the score that Mr. Bryce's work sufficed for all purposes. In January 1911 he again eulogized his services. The treaties concluded

<sup>1</sup> Skelton, *Sir Wilfrid Laurier*, ii. 126-34. There were four Canadian negotiators headed by Sir Wilfrid Laurier.

<sup>2</sup> *Parl. Pap.*, C. 6918-22, 6949-51, 7107, 7161 (1893-4); 7836.

<sup>3</sup> *Parl. Pap.*, Cd. 1400, 1472 (1903); 1877, 1878 (1904); 3159; Ewart, *Kingdom of Canada*, pp. 299 ff.; *Commons Deb.*, 1903, p. 4815; Skelton, ii. 135 ff.; *Canadian Annual Review*, 1903, pp. 346 ff. Lord Alverstone's defence was palpably idle, and as regards the islands it is incredible that he can really have decided judicially; to say so is to condemn him as incredibly stupid.

good faith, and is not therefore technically a tenant is to be treated as such under s. 3. Suits for possession of property on title have to be valued under s. 7 cl. v of the Court-fees Act, and according to sub-clause (e) of that clause it is imperative that the buildings in it should be valued. In suits for possession based on mortgage or lease, it is not necessary that the improvements in the property including buildings should be valued as the clauses ix and xi relating to them prescribe their value at a certain amount regardless of any buildings in the property, 5 Mad. 284. But when the suit is on title, the imperative provisions of the clause (v) have to be followed and the buildings in the property valued. The plaintiff is the legal owner of the property and everything in it including buildings are to be valued and the fact that he has to pay compensation for them under the Compensation Act before taking possession of them does not relieve him of the necessity of valuing them for purpose of court-fees.

**2. Ryotwari lands and fragmental holdings.**—The whole land in Malabar is practically ryotwari there being no zamindary lands at all and there are practically no inam lands. According to the Court-fees Act suits for possession of zamindary holdings and inam lands have to be valued in the case of the former, at the market value and, in the case of the latter, at 15 times the annual net profits, which value amounts in most instances to practically the market value, while a suit for possession of ryotwari lands has to be valued only at 10 times the revenue, which value always falls far short of the above two values. It is an anomaly that zamindary lands for which the holder has to pay rent to the zamindar and which are therefore ordinarily worth far less than ryotwari lands, for which the holder has to pay only revenue to Government, have to be valued for purpose of court-fees at a higher amount than the latter. Except Bengal, none of the Provinces has so far tried to remove this anomaly. In the Punjab and in the Central Provinces and the Hyderabad Assigned Districts, however, rules have been framed under s. 3 of the Suits Valuation Act making the value for jurisdiction of a suit for possession of ryotwari land at 30 and 12½ times the assessment respectively. But these rules apply only for purposes of jurisdiction and not for court-fees, there being no provision in the Court-Fees Act of those provinces corresponding to the proviso to Sec. 7 Cl. V of the Madras Court-Fees Act that value determined by rules, if any framed under S. 3 of the Suits Valuation Act shall be the value for court-fees also. If any rule is made in Madras under this Section, increasing the jurisdiction value to more than ten times the revenue it would automatically apply to court-fees also, resulting in an increase in the court fees payable unlike in the other Provinces and there will be no justification for it. Moreover, this is an all-India question, and none of the other Provinces has amended the Court Fees Act in this respect, except Bengal. It may be desirable to have some uniformity with them on this point. Fragmented ryotwari holdings exist in Malabar

British Columbia refer to the period before responsible government was fully operative, and recent research has really established that in both cases British negotiators made not a bad stand for the interests of Canada, and the severe censures which have been passed on the British attitude from 1866-71 are somewhat unwise, having regard to the fact that the United States was full of war veterans, while Canada was without serious means of defence and communications were too poor to allow of the United Kingdom affording effective aid. Doubtless the attitude of Britain during the earlier stages of the War of Secession and the hatred felt towards her by the Fenians added to the dangers of Canada; on the other hand, as a distinct state her life would have been worse than precarious, as the experience of Texas sufficiently proves.

In the case of Australia the question of treaties arose in a rather curious manner in 1870<sup>1</sup> when a Commission on federation of Victoria took up the issue. There was at that time a strong feeling in Australia that the British Government by insisting on recalling her forces, seeing that the Colonial Governments were no longer willing to pay for them, was abandoning them to danger, and the menace of Russia happened to be specially strong, being estimated as far more serious than it really was. The Commission denounced the position of the Colonies; they were defenceless, yet liable to be involved in British wars, and from reasons of distance they could not look for adequate protection. They suggested, therefore, that the great Colonies should be given the right of concluding treaties,<sup>2</sup> which would make them sovereign States and enable them to remain neutral in the case of a British war; or if they preferred to take sides, their intervention would be the more impressive as it would be voluntary. There was no idea of disowning the sovereignty of the Crown, but the aim was to secure a recognized neutrality through the concurrence of foreign powers, whose attitude of generosity towards privateering and merchant ships indicated a spirit which would lead to the concession of the

<sup>1</sup> *Parl. Pap.*, 1870, Sess. 2, ii. 247; contra Higinbotham, *Deb.*, x. 690 ff.

<sup>2</sup> For Canadian discussions see *Commons Deb.*, 1882, p. 1075 (Blake); 1887, p. 376; 1889, pp. 171-94 (Cartwright); 1892, p. 1123 (Mills); Laurier, *Deb.*, 1907-8, p. 1260; 1909, p. 1980; Borden and Tupper, *Canadian Annual Review*, 1903, pp. 325-30; Willison, *Sir Wilfrid Laurier*, i. 206 ff.

54 M. L. J. 67 by a Division Bench disagreed with all the above Madras and other decisions and it was held that a specific plot not separately assessed in an assessed estate can be said to be a fractional share of it, the area alone without other factors being taken into consideration, that there is difference in meaning between the phrases 'definite share' and 'fractional share' and that therefore the notification would apply to a suit for possession of such a plot so as to make its value equivalent to 10 times the proportionate revenue calculated in point of area. Since the decision in 54 M. L. J. 67, commented on elsewhere in these commentaries, parties have begun to value suits for specific unassessed plots at 10 times the proportionate revenue (in point of such area) as the court-fees payable on this method of valuation are much lighter. If as the decisions of all the other High Courts and the majority of the Madras decisions hold, 'definite share' in the Act is synonymous with 'fractional share' in the notification, an unnecessary change in language has been used in the latter, and that has been the cause of the divergence in view. The matter can be easily set right by changing 'fractional share' in the notification to 'definite share.' The Government can do this, and the matter does not need legislative sanction. Under Section 35 of the Act the Government have power to cancel or vary any notification made by them under the Act. This change will not be increasing the court-fees due under the Act, as the decision says that under the Act itself (apart from the notification) a specific unassessed plot has to be valued at the market-value. It will also not be a grievance, as in all the other provinces Court-fees are paid on the market-value in such cases, and even in Madras before 1927 such cases were and now occasionally are, valued, at the market-value. This change will make the method of valuation of specific unassessed plots uniform throughout the whole of India. For a full discussion as to the origin of the notification and its applicability to conditions in the Madras Presidency, see the commentaries under s. 7, cl. v (d) *supra*.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Fee on memorandum of appeal against order relating to compensation.

#### COMMENTARY.

'Act for the acquisition of land.'—The Acts in force are the Land Acquisition Act I of 1894; the Land Acquisition Act (Mines and Minerals) Act XVIII of 1865,



tions, and Queensland purported to annex the territory. The British Government refused to accept the proposal, and Germany then took advantage of the extreme danger produced by the Egyptian situation to risk British indignation by effecting an unexpected annexation. The United Kingdom and Germany and the United Kingdom and the Colonies then indulged in futile recriminations, and belatedly the Dominions took the common-sense step of finding the money to justify the annexation of what was still left by the United Kingdom. It may be noted that, at about the same time as New Guinea was lost, South-West Africa fell into the power of Germany because the Cape Government had delayed through negligence and a change of ministry to give the necessary assurance to the United Kingdom of willingness to bear the cost of administration.<sup>1</sup>

The New Hebrides<sup>2</sup> caused further difficulties; by 1878 France had sufficient interests to render recognition necessary; this was repeated in 1883 and more definitely in 1887, while the French policy of colonizing New Caledonia with exiled criminals roused fierce anger in Australia and led Mr. Deakin and some of his friends to plan an armed attack on France, which would have been suicidal, and which throws a painful light on the immaturity of the mental outlook of even the best-read Australian of the day, and his inability to understand foreign politics. The same thing had been shown in the quite impracticable suggestion of neutrality in 1870 which was of course in part at least dictated by Mr. Gavan Duffy's hatred, as an Irish patriot, of the English. Samoa<sup>3</sup> also was an object of interest, especially to New Zealand, which ineffectively sought to legislate to provide for inquiry as to federation or annexation in the Pacific in 1883. By the Anglo-German treaties of 1886 Samoa with Tonga and Nive were left neutral, while Germany obtained the Northern Solomons and the Caroline and Marshall Islands, the United Kingdom the Southern Solomons. But in

<sup>1</sup> *Parl. Pap.*, C. 4190 (1884); 4262, 4265, 4290 (1884-5); 5180 (1887); Molteno, *A Federal South Africa*, pp. 82 ff.; B. Williams, *Cecil Rhodes*, p. 77. Rhodes was in part to blame.

<sup>2</sup> *Parl. Pap.*, Cd. 3288, 3525, and 3876. See also Cd. 5323, pp. 548-63 (conference debate).

<sup>3</sup> *Parl. Pap.*, C. 9506; Cd. 7, 38, 39, 98. Scholefield (*The Pacific*, pp. 177 f.) does not realize the suddenness of the crisis.

matter is less than Rs. 5,000 does not lie to the High Court but lies to the District Court. To the same effect is also the decision in *Mahalinga Kudumban v. Theetharaapa Mudaliar*, 56 M.L.J. 387. This is an earlier decision than the one reported in the same volume at p. 357 which followed this decision at page 387. It is undesirable that in the same Land Acquisition proceedings certain class of appeals lie to the District Court and some to the High Court.

**Appeals by Government.**—In the above case it was held that an appeal by the Secretary of State required a court-fee of Rs. 10 only under Art. 17, Cl. (4) Sch. II of the Act. But this distinction seems to be unwarranted in view of the amendment of the Land Acquisition Act and the substitution of a new s. 54 in it by Act XIX of 1921. Now every award under the Land Acquisition Act is a decree and appealable as such. *Rai Bahadur Narasing Das v. Secretary of State for India*, 29 C. W. N. 822 P. C. The inference drawn from the discrimination made between the claimant and the Secretary of State in the matter of court-fees to be paid on appeal from the award of the Land Acquisition judge in s. 8 Court-Fees Act is no longer warranted by reason of the Land Acquisition Amending Act making the judge's decision a decree. "The special provision of s. 8 of the Act may now probably be regarded as redundant." *Secretary of State v. K. S. Banerjee*, 97 I. C. 140 = 1927 Cal. 45.

An appeal filed by the collector against an award by a District Court under the Land Acquisition Act is taxable with court-fees under s. 8 of the Court-Fees Act. If s. 8 does not apply then the matter comes within the scope of Art. 1, Sch. I of the Act. Sch. II, Art. 17 is not applicable to such an appeal. *Special Collector of Rangoon v. Ko Zi Na*, 6 R. 281 = 111 I. C. 870 = 1928 Rang. 197; See *Secretary of State for India v. Baij Nath*, 138 I. C. 199 = 9 O. W. N. 396 = 1932 Oudh 224, holding that Sch. I. Art. 1 applies.

**"Amount claimed by appellant."**—In the case of an appeal by the Crown, the above words mean the amount the appellant claims should have been awarded. That is certainly not the natural meaning of the words, but if the section does apply to the case of an appeal by the Crown, then it is the only interpretation. *Special Collector of Rangoon v. Ko Zi Na*, 6 R. 281 = 1928 Rang. 197.

It is obvious that no court will award a claimant more than what he asks for and consequently the amount of compensation awarded can never exceed the amount claimed. Therefore if an appeal is preferred against the award and the court-fee on the difference of the two amounts to be paid, it clearly follows that the appeal contemplated is that of the claimant, and the concluding clause of the section makes it clear. The language used is "the amount claimed by the appellant" and the Government is the person who pays and not the person who claims compensation. The section as it is worded cannot apply to appeals by Government. And in view of further amendment to the Land Acquisition Act this section can well be repealed.

deplorable Convention. It was further tinkered with in 1914,<sup>1</sup> and remained in 1926 a source of unending discredit to both France and the United Kingdom, the only sensible suggestion remaining that of Mr. Massey, who urged, like his predecessor, partition in the interest of the unhappy natives. It is characteristic of the curious fatuity with which the matter was handled even in 1914 that, though the Dominion Governments were not ignored as regards the new Convention to be arranged, they were not asked to send negotiators who might then have acquired first-hand knowledge of the impossibility of any arrangement with France.

The other point of chief interest to the Australian colonies in their earlier years of self-government was that of a customs union, which involved the treaty power ; this will more conveniently be noted later.

In South Africa also there were difficulties in adjusting the views of the Cape and Natal, after responsible government, and the Imperial Government, as regards relations with the still unconquered natives, and with the Boer republics. They came to a head, as has been seen, in the quarrel between Sir Bartle Frere and Mr. Molteno as regards the attitude of the Cape towards federation and other topics, but the only serious issues were those arising from the success of Germany in securing South-West Africa, and in this the chief share of the blame was clearly South African.<sup>2</sup> There was a certain measure of conflict between the ideal of the Cape to expand, and the doubt of the British Government as to the wisdom of expansion, while a certain solution of serious problems was afforded by the genius of Rhodes and the creation of the South Africa Company. The Boer War, however, raised an extremely curious question : could the Cape remain neutral in the war ? Some of Mr. Schreiner's ministry would probably have liked this course to

<sup>1</sup> Protocol, 6 Aug. 1914 ; Cmd. 1680. See also Cmd. 1827. The failure to achieve a settlement during the Paris Conference was one of many blunders of British diplomacy, and the same observation applies to the failure to secure concession in return for the remission of French debts in the settlement with M. Caillaux in 1926. See Colonial Office Annual Report No. 1273 (1924). Cf. Cd. 3288, 3525. It is fair to note that British interests were sacrificed by the high tariff of Australia on exports, while France aided her settlers by drawbacks and subsidies.

<sup>2</sup> Walker, *Lord de Villiers*, pp. 180 ff.

Acquisition Act (I of 1894) being dissatisfied with the amount of compensation awarded to him by the court on a reference made to it under section 18 of the Act, appeals to the High Court, is he bound to include in the valuation of his appeal the amount of 15 per cent of the excess market value and pay court-fee thereon? This was the subject of a reference by the Taxing Officer of the Madras High Court. *Koppaka Brahmanandam v. The Secretary of State for India*, 53 M. 48=57 M. L. J. 357=1930 Mad. 45. Ananatakrisna Ayyar, J., answering the reference in the affirmative observes as follows: "The compensation to be awarded includes not only the market-value but also the 15 per cent in such market-value. The extra amount of compensation claimed by the appellant in an appeal should under s. 8 of the Court-Fees Act include also the 15 per cent of the market-value and he should pay court-fees thereon. An appeal is different from a claim put forward by the applicant before the collector. When once the court on a reference to it under s. 18 of the Land Acquisition Act determines the amount of compensation to be awarded for the land acquired, the claimant if dissatisfied with the amount of compensation so awarded by the court should in case he prefers an appeal value his appeal at the figure which represents the difference between the amount of compensation awarded to him and the amount of compensation that he claims in the appeal. *Muhamad Ali Amjad Khan v. Secretary of State for India*, 30 C. 501". Where the appellant claims not only the extra market-value but also the extra 15 per cent thereof, "to entitle him to do so, on a proper construction of s. 8 of the Court-Fees Act, he is bound to include in the valuation of his appeal the extra 12 per cent also and pay the court-fee due on the amount."

**Consolidation of appeals.**—In a batch of 44 Land Acquisition references, having regard to the fact that the parties were the same in all cases and the plots of lands were contiguous, etc., it was held that the appeals should be consolidated and the court-fee paid upon the value of the consolidated appeals under s. 17 of the Court Fees Act subject to the limitation under Art. I Sch. I of the Act. *Kasi Prasad v. Secretary of State for India*, 29 C. 140. Unfortunately the head-note in the authorised Report is rather inaccurate. What their Lordships actually decided was that for the purposes of the hearing the appeals may be consolidated and heard together and the only concession granted was that the maximum limit for collection of court-fee prescribed by Art. I, Sch. I of the Act might be applied. That only means that if the sum total of the separate amounts of court-fees paid on the individual appeals exceeded Rs. 3,000 the sum of Rs. 3,000 alone may be collected on the consolidated batch. That is quite a different thing from saying that the value of all suits should be totalled up and the court-fee paid on that total amount subject to a limit of Rs. 3,000. Where the fee exceeds Rs. 3,000 it may not perhaps make any difference whether the fee in each suit is added and the total fee collected or whether the value of all the claims is totalled

Newfoundland were duly made the subject of agreement with that Government, an instance bringing out the character of the rule as to consultation as then understood. The later *entente* of 1907 with Russia, effecting a vital change in British policy, was never discussed at all with the Dominions, while the first Japanese Alliance was treated in the same way. But the Hague Conference of 1907,<sup>1</sup> resulting, as it did, in the decision to summon a Naval Conference at London in 1908, which determined on the Declaration of London,<sup>2</sup> roused at last deep interest in the Dominions, where English discussions of the rules of contraband and seizure of property at sea awakened keen anxiety among peoples deeply concerned in oversea export trade. The result was that Australia decided to raise the issue at the Imperial Conference of 1911, and so inaugurated a new chapter in the history of the Empire.

#### § 5. *The Imperial Conference of 1911 and Co-operation in Foreign Policy*

The Australian delegates at the Imperial Conference of 1911<sup>3</sup> explained clearly that their criticism was due to the fact that the Declaration of London had been arranged without their having any opportunity even of making representations as to its terms. Their concrete critiques rested on the usual points, the recognition of food as conditional contraband; the possibility of sinking of neutral vessels by belligerents; and the rules as to conversion of merchant ships into men-of-war. Sir W. Laurier was insistent on the view that the Conference must not demand from the Imperial Government consultation on issues of foreign policy as a matter of right, for that would involve the Dominions in the admission that they were bound automatically to put their forces at the disposal of the United Kingdom in time of war, which was not the case,<sup>4</sup> but he did not disagree with the principle that consultation in such cases as those of preparations for Hague Conferences was appropriate, and this view was shared by the other members of the Con-

<sup>1</sup> *Parl. Pap.*, Cd. 3857, 4081, 4174, 4175 (1908).

<sup>2</sup> *Parl. Pap.*, Cd. 4554, 4555 (1909); 5418 (1910); 5718 (1911).

<sup>3</sup> *Parl. Pap.*, Cd. 5745, pp. 97 ff. Cf. Cd. 4554, 5418; *Lords Deb.*, 8, 9, 13 March; Cd. 5746-1, pp. 4-20.

<sup>4</sup> Cf. Skelton, ii. 91 ff. (1899), 343 f. (1911).

before proceeding to deliver judgment, record a finding whether a sufficient court-fee has been paid.

(2) If the Court records a finding that an insufficient court-fee has been paid on the plaint or memorandum of appeal the Court shall—

- (a) stay all further proceedings in the suit until it has determined the proper amount of such court-fee payable and the plaintiff or the appellant, as the case may be, has paid such amount or until the date referred to in clause (b), as the case may be :

Provided that if the plaintiff or appellant gives, within such time as the Court may allow, security, to the satisfaction of the Court, for the payment of any additional amount for which he may be found liable the Court may proceed with the suit,

- (b) fix a date before which the plaintiff or appellant shall pay the amount of court-fee due from him, as determined by the Court under clause (a).

(3) If the plaintiff or appellant fails to give the security referred to in clause (a) of sub-section (2) or to pay the amount referred to in clause (b) of that sub-section within the time allowed, or before the date fixed, by the Court, as the case may be, the suit shall be dismissed.

**8c.** If the Court is of opinion that the subject-matter of any suit has been wrongly valued it may revise the valuation and determine the correct valuation and may hold such inquiry as it thinks fit for such purpose.

*Inquiry as to valuation of suits.*

**8d.** (1) For the purpose of an inquiry under section 8C the Court may depute, or issue a commission to, any suitable person to make such local or other investigation as may be necessary and to report thereon to the Court.

*Investigation to ascertain proper valuation.*

in fact, already diplomatic, and that the deepest interest of the Dominions was to be kept in touch with foreign affairs. But his view then was premature and evoked no serious consideration. The Conference, however, on the motion of Sir W. Laurier, agreed, as already noted, to recommend further efforts to secure the right of the separate withdrawal of the Dominions from general treaties by which they were bound, on the score that most favoured nation clauses had compelled Canada to extend to Argentina, Austria-Hungary, Bolivia, Colombia, Denmark, Norway, Russia, Spain, Sweden, Switzerland, and Venezuela the concessions made under her treaties as to France. But no suggestion was made to effect any change in treaty procedure generally.

It was further agreed that the Committee of Imperial Defence should be used as a means of keeping the Dominions in touch with wider aspects of defence, and that when matters which interested the Dominions were under discussion at that Committee, steps should be taken to secure the attendance of Dominion representatives, while in each Dominion a Defence Committee should be set up, which it was contemplated would co-operate with the Imperial Defence Committee in devising homogeneous schemes of defence. In Canada, the election of 1911 saw the utter defeat of the Liberals, and when Mr. Borden, the new Prime Minister, came to the United Kingdom in 1912, it was necessary to explain to him the whole aspect of foreign politics on the lines adopted in the case of the Prime Ministers in 1911.<sup>1</sup> Mr. Borden then homologated the idea of the proposed use of the Committee, and found no difficulty in holding that a member of the Dominion Cabinet could easily spend some months yearly in England in order to take part in Committee meetings. He desired also that such a minister or other members of the Cabinet might, when in London, be given in confidence full information on foreign affairs and Imperial policy. To this no exception was taken; indeed on 15 March 1910 Lord Crewe had suggested that the Dominions should take a greater interest in Imperial problems and diplomacy, and had urged co-operation and common action in all these matters. It was, of course, made clear that the Imperial Cabinet must decide all questions of policy, and that the Committee must be merely

<sup>1</sup> Keith, *Imperial Unity and the Dominions*, pp. 322 ff.

*party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid.*

#### COMMENTARY.

Sections 9 and 10 are repealed and in their place, Sections 8A to 8F are enacted. The new sections are more comprehensive and indicate the procedure to be followed in the matter of ascertainment of proper court-fee and collection thereof more minutely, than Ss. 9 and 10 of the main Act, thus making the Act a self-contained enactment and obviating the necessity of having recourse to the provisions of the Code for any purpose relating to payment of court fees. The important changes introduced are :—

1. In every suit or appeal, a finding shall be recorded as to the sufficiency of court-fee as soon as may be after the registration of plaint or memorandum of appeal and in every case before the judgment is delivered. This ensures the question being considered by the presiding officer in every case, whether the party takes objection or not.

2. If the court finds the court-fee paid as insufficient, it shall fix a date for the payment of the deficit court-fee and shall not proceed with the suit or appeal until the deficiency is made good. If the deficit court-fee is not paid within that date, the suit or appeal shall be dismissed. S. 10 (2) of the main Act which confers a similar power on courts is not of so wide a scope, applying only to under-estimation of market-value and net profits in suits, though O. 7, R. 11 C. P. C. would enable the court to deal with all cases of non-payment of proper court-fee in suits and to reject a suit if proper court-fee is not paid within the time granted by court. An important innovation introduced is that enabling the court to go on with the suit or appeal if the plaintiff or appellant furnishes proper security for payment of deficit court-fee found due. In big suits, where a large sum of money may be payable as court-fee, this would enable a party to go on with his suit or appeal, even if he could not find immediate money.

3. The power of the court to revise the valuation given by the plaintiff or appellant and to determine the correct valuation is placed beyond doubt. By the insertion of the words "subject to the provisions of section 8C" in s. 7 cl. (iv), this power can be exercised even with regard to suits where an arbitrary valuation has been allowed till now. Even prior to the enactment of s. 8C, the Calcutta High Court was of opinion that Courts had power to revise the plaintiff's valuation in a suit falling under cl. iv by virtue of O. 7, rr. 10 and 11, C. P. Code, but in the absence of rules framed under s. 9 of the Suits Valuation Act, it would have no standard to fix the value. See 61 Cal. 796 (F. B.) This position is not altered by the amendment.



could not acquiesce indefinitely in a lower status than minor powers in or out of Europe. It was, of course, obvious that there must be unanimity in the Empire on matters of peace or war, such as rules as to belligerency, but it was thought that unanimity would in the long run be as easy to obtain if the Dominions were formally represented as if they were kept in a position of tutelage. But it was recognized that it was, if not necessary, at least legitimate to wait for any proposal to this effect from the Dominions, and, as the Dominions then were one and all intent on the policy of concentration on domestic issues, no action was taken, and the outbreak of war brought new issues into operation. Canada, however, on the death of Lord Strathcona, its venerable High Commissioner, by appointing a minister to perform his duties for the time being, took the first step towards adopting the policy of having a resident minister in the United Kingdom under the new scheme.<sup>1</sup>

### § 6. *The Great War and the Status of the Dominions*

Under existing conditions the Dominions had no responsibility whatever for the diplomacy which led up to the Great War, and they were involved in hostilities within a few days after the urgency of the crisis had become obvious to the Governments from the press.<sup>2</sup> It was fortunate in the extreme that the necessity of vindicating Belgium so appealed to the Dominions that assurances of support in any necessary measures were forthcoming at once, and that spontaneous offers of aid flowed in the moment it was seen that a struggle was inevitable. The Dominions had, under the constitutional law of the Empire,

department at least did not fully realize the momentous character of the change, which was adopted much more readily than any other important reform in Imperial relations known to me, and wholly on Imperial initiative.

<sup>1</sup> Sir Charles Tupper, indeed, by retaining for a time the Ministry of Railways while acting as High Commissioner, combined Cabinet membership and representation of Dominion interests in London, but Sir W. Laurier's Government made the High Commissionership essentially non-political.

<sup>2</sup> Keith, *War Government of the Dominions*, chaps. ii and iii. Lord Haldane's unexplained failure to warn the Dominions and their people of the dangers of the situation, and Sir E. Grey's failure to consult even South Africa as to his proposed treaty with Germany in 1913-14, are properly open to censure; cf. Egerton, *Brit. Col. Policy in the XXth Century*, pp. 120 ff.; Keith, *The Belgian Congo*, p. 168.

3. The court can act only in the case of suits falling under s. 7 paragraphs (v) and (vi) when it thinks the value or nett profits have been wrongly mentioned. It does not apparently apply to a case for example a suit falling under para IV-A of s. 7, where also the market-value has to be computed.

**Is the section necessary?**—As observed already the scheme of valuation under the Act for the computation of the court-fee is either an *ad valorem* one or a fixed one. If it is to be on an *ad valorem* basis then the value is either the market-value, or a value put by the plaintiff as he chooses, or one calculated at a multiple of nett profits or the amount of revenue. It is only in cases where the Act directs the fee to be computed on the market-value or the nett profits that the question of determination of the market-value or profits comes in. When such a question arises a court could decide it as it would any question of fact. Order 26, r. 9 C. P. C. provides for the issue of commission for local investigation. It is thereby enacted that in any suit in which the court decides a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or *annual nett profits*, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court etc. It will be seen there is ample provision in the C. P. C. to enable it to issue a commission in proper cases, to make a local investigation about the market-value of property or nett profits. It is therefore a matter for consideration whether there is any necessity to specially empower a court to issue commissions and hedge the power with restrictions the necessity for which is not apparent. In the first place there is no need to have a separate section giving the power to court to issue commissions in view of the provision in the Code. Secondly the power given by s. 9 is inadequate as it does not cover all kinds of suits and does not relate to appeals.

There are suits for instance that fall under s. 7 (iv-A.) (Madras amendment) for cancellation of a decree or document, or s. 7 (x) (d) for specific performance of an award, or Art. 17 (A) of Sch. II (Madras amendment) where the court-fee depends on the value for jurisdiction which in turn depends on the value of the property. In all these cases the value of the property may have to be determined by the issue of a commission for local investigation. Again there are lands assessed to revenue. In cases where for stamping an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the party should furnish a memorandum giving an estimate of the market-value. A commission may issue to test the same. *Ex parte Monee Rangappan*, 3 M. H. C. R. 352.

Further in appeals in mortgage suits for instance where the appellant seeks to include or exclude one item of property from the mortgage decree the value of that item has to be taken into con-

and later Sir E. Kemp, maintained continuous touch with the Imperial Government.

The creation of the Imperial War Cabinet of 1917-18, which will later be discussed, led to a participation of the Dominion Governments in the task of forming the diplomatic as well as the war policy of the Empire, and inevitably the advent of the armistice was followed by the transformation of the War Cabinet into the British Empire delegation to the Peace Conference. An unfortunate contretemps had occurred regarding the armistice terms; they were accepted without troubling to consult Mr. Hughes, who was then in London, no reason being available even to throw a semblance of excuse over the neglect, though in point of fact the omission was hardly productive of serious inconvenience. Sir R. Borden then took the lead in demanding on 29 October 1918 the formal representation of Canada at the Conference,<sup>1</sup> and in this demand he had the warm support of Mr. Hughes, though not of the Commonwealth Cabinet, which was in effect overruled by its imperious head, and of General Smuts, Mr. Massey being decidedly cold. The British Government demurred for a time, but Sir R. Borden pressed the matter on 4 December, and the objections of the Allied Powers were at last overcome. The objections were, in point of fact, absurd; Canada, Australia, New Zealand, and the Union had done infinitely more to support the Allied cause than any of the Powers assembled, except the Great Powers themselves, and the idea that they must be content with panel representation on the British delegation of five arranged for in advance by the Supreme War Council, consisting of the Prime Minister and one minister of each of the Western Allies, constituted in February 1918, was manifestly absurd. In the final arrangement, while the panel system remained available for the British Empire, now recognized for the first time as a contracting party *eo nomine*, the Canadian, Australian, South African, and Indian Governments were allowed two representatives apiece and New Zealand one, with the same right of appearance and audience as the minor Powers. One concession was made to foreign objections; if there were any

<sup>1</sup> Separate representation based on the precedents of the Radiotelegraphic and Safety of Life at Sea Conferences of 1912 and 1913-14 was strongly suggested by the writer in 1916; see *Canadian Law Times*, xxxvi. 856.

**Finding of court of first instance.**—Where a Munsiff has held that the value of the property was within his jurisdiction, the subordinate judge cannot hold that the former had no jurisdiction to hold so. *Ishan Chandra Mookerjee v. Lokanath Roy*, 14 W. R. 451.

**Section 28 of the Act, and O. VII, r. 11 C. P. C.**—Sections 9, 10 and 11 are not in conflict with s. 28 of the Act or the provisions of O. VII, r. 11 C. P. C. Section 28 is of universal application and wider in scope than ss. 9 and 10. Cases coming under s. 28 of the Act would arise only where through inadvertence or mistake of the court, a plaint which was subsequently discovered as insufficiently stamped was received, filed or used. *Balakaran v. Govindnath*, 19 A. 129.

10. (i) If in the result of any such investigation the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

Procedure where  
nett profits or market-  
value wrongly esti-  
mated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

**Local Amendment.**—The following clause has been substituted for clause (ii) in Assam by Assam Act III of 1932.

((ii) *In such case—*

(a) *the suit shall be stayed until the additional fee is paid and if the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed; and whether the additional fee is or is not paid,*

(b) *the Court may, if it is of opinion that the estimation has been grossly insufficient, further order that the expenses*

Dominions beyond the Seas, Emperor of India, there signed Mr. Lloyd George and four British representatives, while the Dominion delegates signed for the Dominions concerned as representatives of the Crown. The same form was adopted in the peace treaties with Austria, Bulgaria, Hungary, and Turkey, and in the treaties with the newly extended States of Czecho-Slovakia, Greece, Poland, Rumania, and the Serb-Croat-Slovene State, in the conventions regarding Italian reparation payments, the cost of liberating former Austro-Hungarian territories, the trade in arms and ammunition, the liquor traffic, and the revision of the Berlin Act. A distinction, however, was made in the case of the Anglo-French convention of 28 June 1919 for the defence of France against German aggression, which was to become operative only if a similar convention entered into by the United States with France became operative. That was signed for the King by two British ministers only, but by Article V it was expressly provided that 'the present treaty shall impose no obligation on any of the Dominions of the British Empire unless and until it is approved by the Parliament of the Dominion concerned'. This was due to the difficulty of the Dominion Premiers pledging themselves to the immediate and effective aid required by the terms of the Convention. But even in the other cases the essential unity of the Empire was preserved by the fact that not only did the Dominion signatures appear under the head of the British Empire, but the full powers to sign were issued by the King on the advice of the Imperial Government through the Secretary of State for Foreign Affairs, though of course at the request of the Dominion Government. The formal request for the issue of full powers was made by Canada in an Order in Council of 10 April 1919, the general procedure having been agreed on by the Dominion representatives in a memorandum of 12 March 1919. Sir R. Borden seems to suggest that as the full powers bear no counter-signature they may be deemed to rest on the Order in Council, but, of course, this is an utterly untenable view. Full powers cannot be issued save under a warrant which must be signed by the King and countersigned by the Secretary of State for Foreign Affairs as authority for the affixing of the Great Seal, and the Great Seal could clearly not be affixed save on Imperial authority. The same observation

observed the current view is that the power under O. 7, r. 11 is equally unrestricted. It may be noticed that O. 7, r. 11 states that in case the deficit court-fee is not paid the plaint shall be rejected. Where as the result of an enquiry under s. 9 the court orders additional court-fee to be paid within a time and the plaintiff fails to do so the plaint is not to be rejected under O. 7, r. 11 but the suit itself should be dismissed under this section. *Walli Amanji v. Muhammad Adam*, 26 I. C. 746.

**Clause 2 of the section.**—The word 'suit' includes an appeal. *Dyal Singh v. Ram Radha*, 15 I. C. 463. But See *Balkaran v. Govinda*, 12 All. 129.

**Jurisdiction.**—The question of court-fee should be determined at the earliest possible moment. *Hitendra v. Rameshwar*, 62 I. C. 43; *Walaiti Ram v. Gopi*, 152 I. C. 799 = 1935 Lah. 75.

The court can dismiss a suit under this section only where it has got the jurisdiction to try the suit; otherwise the court is bound to return the plaint under O. 7, r. 10 C. P. C. for presentation to the proper court which will give credit to the court-fee already paid by the party. *Ganesh v. Tatyā Bharmappa*, 51 B. 236 = 1929 Bom. 257 = 29 Bom. L. R. 280. See also 8 B. 313 and 35 Mad. 567.

**Procedure where deficit court-fee is not paid as directed.**

1. Suit to be stayed until deficiency is made good. *Tajammal v. Nowabdoad Khan*, 3 I. C. 830.

2. Where there is still a non-compliance of the order of the court, the court has a right to enlarge the time for payment. *Dwaraka Nath v. Kethara Nath*, 2 I. C. 1; *Chuni Lal v. Ajudhia Prasad*, 19 A. 240; *Bhagwandas v. Haji Abu*, 16 B. 263; *Rai Kesori v. Madan Mohan*, 31 C. 75. See also s. 148 C. P. C.

3. Where the court-fee is still not paid, then the court is bound to dismiss the suit; for the section is mandatory. *Bidhubushan v. Kolachand*, 196 I. C. 335 = 1927 Cal. 775. It should not reject the plaint but only dismiss the suit. *Brij Krishna Dass v. Murali Rai*, 56 I. C. 316.

**Effect of dismissal under the section.**—A dismissal has the same effect as rejection under O. 7, r. 11 C. P. C. *Balkaran v. Govinda*, 12 A. 129. The result of the rejection of a plaint under O. 7, r. 11 is found in r. 13 where it is provided that the rejection shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Dismissal of a suit under this section cannot operate as *res judicata*. *Mahomed Salim v. Nabian Bibi*, 8 A. 282.

**Abandonment of claim.**—Where the plaintiff abandons a portion of the claim at the initial stage of the litigation instead of complying with an order for the payment of deficit court fee the court should not dismiss the entire claim under this section. *Ramprasad v. Bhinan*, 27 A. 151.

since been variously estimated, nor in fact is it possible with any confidence to say what has been the effect. The Liberal party in Canada, then in opposition, was specially contemptuous of the value of the new status, which was, in their view, absurd to predicate of a Dominion which could not even alter its own constitution. Mr. Doherty, on the other hand, actually declared that the separate signature for the Dominions was essential, as the Imperial Government had lost the right to bind the Crown in any other way. The theory was obviously contradicted at once by the Anglo-French convention for the defence of France, and a large number of treaties renewing arbitration conventions, as well as the host of commercial and extradition treaties, have since been signed, for the whole Empire,<sup>1</sup> by Imperial representatives alone. The most difficult point to be faced was Article X, which raised much anxiety in Canada from the point of view of the possibility of Canada being involved in responsibility for guarantees of European territory. Mr. Doherty pointed to Article V, which made it clear that, if Canada were asked to take any action, she would have to be invited to send a representative to the Council, and as decisions by the Council had to be unanimous, if she dissented, she could not be called upon to act in any way. He did not disclose what later came to light, that Canada had vehemently objected to the whole system of Article X, urging that a guarantee of territorial arrangements which Canada had not settled was unfair, and should be left to the Powers in Europe who in fact settled the terms of peace. Mr. Doherty's apologia in fact made nonsense of Article X. On 11 March 1920 Mr. Rowell defended the League from the United States criticism on the score of six British votes by maintaining that it had been definitely understood that, if a dispute arose between any part of the Empire and a foreign country, and if the issue, not being suitable for arbitration or judicial settlement, were referred to the Assembly for investigation and report, the other

*de droit international*, 1923, pp. 195-226; Baty, 41 *C. L. T.* 677-704; Harrison Moore, *J. C. L.* viii. 21-37; Allin, 10 *Minn. Law Rev.* 100-22; Lewis, *B. Y. B. I. L.*, 1925, pp. 30 ff.

<sup>1</sup> These treaties all render their actual application to Dominions, Colonies, or mandated territories or protectorates facultative, i. e. they assume that a Dominion is exactly in the same international position as a Colony.

profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

**Local Amendments.—Madras.**—In place of para 2, the two following paragraphs have been substituted for Madras by s. 9, Madras Court-Fees Amendment Act V of 1922 :—

*Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits so ascertained, is paid. If the additional fee is not paid within such time as the court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.*

*Where a decree directs an enquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.*

**Bengal.**—The following section has been substituted for s. 11 by Bengal Act VII of 1935.

11. *Where, in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall*

*Procedure in suits  
for mesne profits or  
accounts when  
amount found due  
exceeds amount  
claimed.*



1924 with the League the treaty of 6 December 1921, as a preliminary to claiming League intervention, if necessary in view of the Irish boundary dispute, was repudiated by the Imperial Government on 27 November 1924,<sup>1</sup> when it was stated that

since the Covenant of the League of Nations has come into force, His Majesty's Government has consistently taken the view that neither it nor any conventions concluded under the auspices of the League are intended to govern the relations *inter se* of various parts of the British Commonwealth. His Majesty's Government consider, therefore, that the terms of Article XVIII of the Covenant are not applicable to the article of the agreement of 6 December 1921.

The claim is hard to substantiate,<sup>2</sup> because the conclusion is *prima facie* not natural, and the fact that the Imperial Government was unable to adduce the formal consent of the rest of the Dominions to their view indicates that these Governments are not agreed as to the soundness of the British contention. Moreover, it is decidedly unfortunate that the conventions concluded under the aegis of the League expressly exclude in some cases the relations *inter se* of territories forming part of the same sovereign State, whether or not these territories are individually members of the League, as in Article 25 of the Convention on the Régime of Navigable Waterways of International Concern and similar treaties.<sup>3</sup> If the British principle were self-evident, it would not, it is arguable, have been necessary to insert such clauses ; but this argument may be met by the consideration of special precaution. Further, it may be contended that the reference in Article X to political independence excludes the Dominions and India as in any way referred to in that article, and *a fortiori* relieves them from any risk of being asked to act against the United Kingdom. The internal arrangements of the British Empire are, it may be held, covered

<sup>1</sup> See also Mr. Chamberlain, House of Commons, 17 Dec. 1924 ; 17 Feb. 1926 (as to the similar case of the Treaty of 1925).

<sup>2</sup> The Free State dissented on 18 Dec. 1924 (L.N.T.S. xxvii). See further, § 9.

<sup>3</sup> *Parl. Pap.*, Cmd. 1993. Convention and Statute on Freedom of Transit, 1921, Art. 15, Cmd. 1992 ; Convention and Statute on the International Régime of Maritime Ports, 1923, Art. 23, Cmd. 2141. But there is no clause to this effect in the International Convention for the Suppression of the Traffic in Women and Children, 1921, Cmd. 1986. In the case of the Arms Traffic Convention of 1925 the non-applicability of its terms to parts of one Empire was asserted in discussion.

Of course this concession is invariably abused by plaintiffs, due it is submitted to the interpretation by Courts of a plaintiff's right to value the claim as he chooses. O. VII, r. 2 para 2, C.P.C. provides that in a suit on unsettled accounts, the plaintiff shall state *approximately* the amount sued for. Do plaintiffs value their suit approximately at all? Cases are not uncommon where to escape at least an initial payment of proper court-fee a ridiculously low value is advisedly put in and a nominal fee paid. At any rate in Madras, cases are not uncommon where the plaintiff values his claim at Rs. 4,000 and gets a decree for Rs. 40,000, the defendant appealing values his appeal at Rs. 100, saying that the defendant is not bound by the plaintiff's valuation. This freedom is claimed even by the plaintiff-appellant to change his value at his own sweet will and pleasure, so that the law relating to court-fees chargeable in account suits and jurisdiction is in utmost confusion. There is no necessity to extend this concession to claims for mesne profits at all. The plaintiff comes forward with a specific allegation that he is entitled to a certain amount as the income from certain properties. Why should he be permitted to enlarge his claim? It is certainly not unfair to apply in such cases the rule that a plaintiff cannot get a decree beyond what he has claimed in the suit.

In view of the mandatory provision of s. 11, no direction for the payment of the additional court fee for the excess sum decreed need be embodied in the final decree. That section casts a duty on the executing court to collect the deficit court-fee when it finds that execution is sought for an amount over and above what was claimed in the plaint. Such fee if paid by the plaintiff decree-holder can be treated as costs relating to execution and the executing court has jurisdiction to pass any order regarding it. *Lakshmanan Chettiar v. Chidambaram Chettiar*, 65 M. L. J. 526=145 I. C. 946=1933 Mad. 787. The section only furnishes one method for protecting the interest of the Crown. The proper procedure, if the appellate court after the hearing and consideration of the appeal comes to the conclusion that a larger amount is due to the appellant than what he has paid court-fees for, would be to post the case for orders and direct the appellant to pay additional court-fee and only then the judgment should be delivered and the decree allowed to be drawn up. *In re Venkatanandam*, 56 Mad. 705=64 M. L. J. 122=141 I. C. 602=1933 Mad. 330.

**Application of the section.**—The section provides for three kinds of suits :—

1. Suit for mesne profits pure and simple;
2. Suit for immoveable property coupled with a claim for mesne profits.
3. Suit for an account.

In cases where a claim is founded on unsettled accounts between parties, or a claim is made for past mesne profits, the plaintiff, as

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a single suit was brought for mesne profits by itself. The procedure is embodied in O. 20 r. 12 C. P. C. which is as follows :—

(1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the court may pass a decree—

- (a) for the possession of the property,
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an enquiry as to such rent or mesne profits,
- (c) directing an enquiry as to rent or mesne profits from the institution of the suit until,
  - (i) the delivery of possession to the decree-holder,
  - (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the court or
  - (iii) the expiration of three years from the date of the decree whichever event first occurs.

(2) Where an enquiry is directed under clause (b) or clause (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Accordingly where past mesne profits are claimed, the court can straightaway pass a decree for same, or direct an inquiry for its determination. In cases where future mesne profits are claimed, the court will have to direct a similar inquiry for its determination. In either case, where such an inquiry is to be held, the court should pass a preliminary decree, and, on the ascertainment of the mesne profits, pass a final decree in accordance with the result of such inquiry. In no case, as the law now stands, could the mesne profits be directed to be ascertained in execution proceedings. Under the present Code, the court can determine past and future mesne profits in the suit itself and make a decree called a final decree for the mesne profits capable of execution. The first paragraph of this section would apply to such a decree also. *Ram Golam Sahu v. Chintamani Singh*, 5 Pat. 361 = 1926 Pat. 218 F. B.

The law requires the plaintiff in a claim for mesne profits to assess the amount of mesne profits and to pay court-fee on that amount. When on a subsequent enquiry an assessment of mesne profits is made if any further court-fee is payable it has to be paid. On payment of the court-fees regular decrees come into existence. *Collector of Etawah v. Bindrahan*, 1931 All. 538.

**Procedure for the collection of the additional fee.**—The scheme of the section is to differentiate cases where there is a decree already passed for mesne profits which is found to exceed the claim, and the case where the mesne profits are left to be ascertained in execution proceedings, and the inquiry shows that the profits so ascertained exceed the profits claimed. The latter is provided for in

cussions, and divergences of view have been far from rare. Thus at the very outset of the Assembly meetings Canada manifested her independence by pressing for the recognition of Armenia as a member of the League, and very effectively focussed Dominion opinion against the suggestion that it was the function of the League to deal with such things as the due distribution of raw materials among members of the organization. The British delegate to the Council had committed himself to willingness that the matter should be investigated, but Canada made it perfectly clear that in all matters affecting her resources the only voice to decide must be her own. In the following Assembly it was South Africa which promoted most energetically the movement to secure admittance to the League for Albania, despite her uncertain frontiers and dubious internal stability, and this view ultimately prevailed over the British dubiety as to the wisdom of action. Australia again declined to agree formally to the Austrian admission to the League, on the score that, if Germany were later admitted, Austria would certainly support her claim for a colonial mandate, and Australia was unwilling even to contemplate Germany restored to such a possession. In 1922 it fell to the turn of New Zealand to assert in no uncertain terms her complete responsibility for the working of the mandate for Samoa. But the most important point was Canada's attitude to Article X, which she endeavoured from the first to have erased. As it was clear that its omission would never be approved by the Assembly, at the Assembly of 1923 she obtained an all but unanimous resolution in favour of an interpretation of the article, under which it was to be recognized by the Council, if it recommended military action under Article X, that it should take account of

the geographical situation and special conditions of each State. It is the business and constitutional power of each member to judge as to its obligation to maintain the independence and integrity of the territory of members, and in what measure the said member is obliged to assure an execution of this obligation by the employment of its military forces. Nevertheless, a recommendation given by the Council will be considered as of the highest importance, and will be taken into consideration by all members of the League, with a desire to execute their engagements in good faith.

It must be added that, in addition to the negative voice of

tion proceedings has been directed. *Fulchand v. Bai Ichha*, 12 B. 981. In *Kewal Krishen v. Sookhani*, 24 C. 173, their Lordships of the Calcutta High Court comment as follows on the meaning of the expression "the suit shall be dismissed." "It seems clear that those words are intended to have a different signification from the words used in the former part of the section. . . . It is contended that inasmuch as the suit had been already decreed, certainly so far as the possession of the property is concerned, it cannot have been intended that the words 'the suit shall be dismissed' should mean that the entire suit shall be dismissed. It is argued that the proper meaning to be put on these words is merely that the application for execution shall be dismissed, leaving it open to the decree-holder to make a fresh application. We are of opinion that this is not the correct construction, having regard to the wording of s. 10. According to that section, when an insufficient court-fee has been paid upon a plaint, the court shall require the plaintiff to pay so much additional fee as would have been payable and the trial of the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the court shall fix, the suit shall be dismissed and by analogy we are of opinion that the meaning of s. 11 is that in case the additional fee required in respect of the excess mesne profits is not paid, execution of the decree shall be stayed until it is paid, and if it is not paid within the time fixed by the court, then the *suit that is to say, the claim for those mesne profits* shall be dismissed. . . . The word 'suit' can fairly be construed as the suit or claim in respect of the mesne profits in respect of which the court fee payable has not been paid within the time fixed by the court." The word "suit" occurs in four places in the section, twice in the first paragraph and twice in the second paragraph. The word means the entire suit in all places but the last where alone it has to be construed differently, forming an exception to the ordinary rule of interpretation of statutes, that the same expression should not be given different meanings in the same section. Whatever that may be, if we have to give such a construction as would not lead to an absurdity, the word 'suit' has to be construed as the claim in respect of mesne profits about which an inquiry was directed to be held in execution proceedings, as permissible under the Code of 1882. Of course, if the court-fee payable in respect of such mesne profits was not paid, the court could enforce the penal clause by dismissing that claim; and for the reasons already stated this penal provision cannot be enforced by courts now.

**Madras Amendment.**—For paragraph 2 of the original section, two paragraphs have been substituted by the Madras Amendment Act. That purports to apply only to cases where an inquiry into mesne profits is directed. Paragraph 1 of the Amendment deals with past mesne profits and paragraph 2 with future mesne profits. The amendment provides a penalty for non-payment of the fee within the time fixed by court. If default is committed and not condoned by court "the claim for the excess" shall be dismissed. This provision.

has a judge on the Court, the other party is entitled to a like privilege, become operative because there was a British judge ? The mere fact that Canada or a Dominion might be asked to go before the Court shows that in a sense they have international obligations, as is assumed in Article I of the Covenant. On the other hand, could one Dominion demand that another should accept arbitration by the Permanent Court on some matter of difference ? Or would such a dispute be ruled as not of an international character, as is held by the British Government ? It is at least clear that it would be very far from satisfactory that parts of the Empire should try to fight out quarrels before a Court which is not interested in the Empire as such.

The Dominions and India have also found congenial opportunity of influence on the Labour Organization under the League Covenant as developed in Part XII of the treaty of peace with Germany. The organization, though its expenses are found by the League, is not a mere agency, but has a distinctive character and form. In addition to a government body fixed originally at 24 members, 12 governmental, 8 representing the chief industrial States and 4 elected by the other States, and 12 representing employers and employees, there is the Conference at which each member is represented by 2 governmental representatives and 2 chosen in consultation with employers and employees. The results of the deliberations of the Convention take the form either of draft Conventions or Recommendations,<sup>1</sup> a two-thirds majority being required in each case, and, when such a convention or recommendation is agreed on, the members are under obligation to bring the proposal before their legislative authorities. If approved by these authorities, conventions must be ratified and then registered by the League Secretariat, when they become binding, and, if violated, may be the ground of reference to a Commission of Inquiry or to the Permanent Court of International Justice, with the result of the members being authorized to impose commercial penalties on a defiant power. Canada has taken an especially interested part in the proceedings of the organization.<sup>2</sup> In 1919

<sup>1</sup> See *Parl. Pap.*, Cmd. 1174, 1612, 1836, 1866, 2051, 2190, 2292, 2325, 2536.

<sup>2</sup> Yet Canada has practically no legislative power on the issues and has only been able to deal with merchant shipping ; cf. Part IV, chap. i, § 8. See c. 12 of 1924 corresponding to the Imperial Act, 15 & 16 Geo. V, c. 42.

suit, only so much of the claim as has not been so decreed shall be dismissed and not the entire claim. The second exception is found in the Proviso, where it is laid down that where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion alone should be dismissed. With reference to cases forming exception 1, it is submitted it is not quite clear what cases are saved thereby from total dismissal. The proviso provides that where the claim for which additional stamp is payable is detachable from the original claim, that additional claim only shall be dismissed. And in every one of the three classes of suits, covered by this section, the additional claim cannot but be detachable. Therefore when such additional claim is so detachable, a decree can be passed by the Court only for the original claim. Under these circumstances the necessity for safeguarding "the decree already passed" from being vacated does not seem clear.

**Future mesne profits.**—This means mesne profits accruing after the institution of the suit. Under Order 20 Rule 12 (c) C. P. C. this could not be decreed forthwith as in the case of past mesne profits and the court has to direct an enquiry for its determination. After its ascertainment, a final decree will have to be passed. Section 11, it has been held by the Bombay High Court, does not apply to future mesne profits. In *Ramakrishna v. Bhima Bai*, 15 B. 416, the plaintiff prayed for mesne profits only from the institution of the suit till the property in question was restored to him and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff he applied in execution of the decree to have the amount of mesne profits determined which being done the question arose as to whether the plaintiff could proceed to further execute his decree without paying court-fee on the amount so awarded in execution. It was held that no court-fee was required and that s. 11 of the Court-Fees Act applies to a claim for mesne profits for which an amount can be and has been *claimed* by the plaintiff and in respect of which some fee has been actually paid. But there is a difference of opinion on this question as to whether court-fee is payable on future mesne profits. The decision in 15 B. 416 has not been followed by the Calcutta High Court, which held in *Dwarka Nath Biswas v. Devendra Nath*, 33 C. 1232, that where a plaintiff asked for future profits and paid court-fees on the amount claimed as past mesne profits only, the provisions of s. 11 were applicable in respect of the whole suit. This was referred to with approval in the Full Bench decision of the same Court in *Ijjatulla v. Chandra Mohan*, 34 C. 954. In that case the question was as to the forum of appeal by the defendant in a case where the value of suit was over Rs. 5,000, if the future mesne profits decreed were included. The plaintiff had already been called upon to pay court-fee on that amount and he had paid it on which the decree was signed and sealed. The court held that the future mesne profits



in vain against the opposition of the British Empire, that immigration should be a matter to be dealt with by the League. Moreover, Article 10 of the protocol gave a valuable privilege to the power which, defeated by a decision that the matter was one of domestic concern, nevertheless submitted the matter to the Council or the Assembly. It could not then be held automatically to be an aggressor, if it violated such a decision by taking up arms. Thus, it was felt in the Dominions,<sup>1</sup> in the very kind of war which most affected them, they might find themselves unable to claim that the enemy was an aggressor under the terms of the League Covenant. A further difficulty was felt in some quarters : would the result of the protocol be to force parts of the British Empire to act against other parts ? The uncertainty of the application to the parts of the Empire *inter se* of the terms of the Covenant was aggravated by the attempt to make these terms more effective in the protocol.

A definite effort was made in February 1926 in the Free State Parliament to define more precisely the nature of the relation of the Free State to the Empire and the League of Nations.<sup>2</sup> The cause of offending was the rash action of a member of the British delegation to the League Assembly of 1925 in speaking on the subject of compulsory arbitration, when he said :

The British Empire at the present moment was a very peculiar and composite political unit. It did not consist of one Government alone ; it consisted of a partnership of six nations standing on a footing of equality. In a matter which affected the vital interests not only of Great Britain but of any one of these six partners, there had to be solidarity of action. In a matter which affected either the vital interests, the independence, or honour of any one of the six nations there must of necessity be unity of action.

This was clearly a most improper pronouncement, affecting as it did to negative the independence in League matters of the several members of the League included within the Empire,

<sup>1</sup> See New Zealand Government Memo., 6 Jan. 1925 (*Parl. Pap.*, Cmd. 2458, p. 15) ; Australian Government, 5 March 1925 (*ibid.*, p. 21). A different but not plausible view is taken by Baker, *The Geneva Protocol* (1925) ; for conjectures on the meaning of 'domestic jurisdiction' in Art. 15 of the League Covenant, see *B. Y. B. I. L.*, 1925, pp. 8-19. For Mr. Latham's view of the protocol and of Art. 15 of the Covenant, see his speech in the Australian House of Representatives, 11 Sept. 1925, when he shows the insecurity of the existing protection.

<sup>2</sup> Mr. Johnson, *Dáil Éireann*, 5 Feb. 1926.

reference to possession of immoveable property irrespective of the question whether court-fees has or has not been paid on the future mesne profits decreed to him by the same decree. *Ramalinga Sethupathi Ambalam v. Andiappa Ambalam*, 54 M. 980 = 61 M. L. J. 424 = 1931 Mad. 717.

In the section as amended recently in Bengal, there is no mention of future mesne profits and it is not clear whether the position that court-fee is leviable on future mesne profits as enunciated in the decisions in 33 C. 1232 and 34 C. 954 remains unchanged.

**Levy of court-fee on future mesne profits.**—The court has no jurisdiction to require the plaintiff to pay additional court-fee upon his claim for future mesne profits as a condition for proceeding with the investigation of the claim and has no jurisdiction to dismiss the proceedings if the additional court-fee is not paid. *Ram Golam Sahu v. Chintaman Singh*, 5 Pat. 361 = 1926 Pat. 218 F. B. Court-fee will become payable when mesne profits have been ascertained, *Ibid*; *Jagdish Sahu v. Khajuri Sahu*, 108 I. C. 801.

Mesne profits, be it past or future, will have to be incorporated in the final decree in any event; and there being nothing in O. 20 r. 12 C. P. C. that justifies the postponement of the passing of the final decree for non-payment of additional court-fee, a final decree is a matter of course after an enquiry. But see 1931 All. 538 cited *supra*. The decision in *Swaminatha v. Muthuswami*, 20 M. L. J. 98 is no longer good law having been pronounced before the Madras Amendment of clause 2 of the section.

**Computation of fees.**—In the case of past mesne profits where the claim turns out to be less than the amount found due, the fee payable is the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits, whether paragraph 1 or 2 of the section applies. But there is a difference regarding the computation of fees on future mesne profits, as per the Madras amendment. Paragraph 3 of the section as amended is to the effect that where the decree directs an inquiry as to future mesne profits, the fee payable is the amount that would have been payable on the amount claimed in execution if a separate suit had been instituted therefor. This method of computation is calculated to increase the burden of the fee over what is provided for in the main Act. In effect, as per the Madras amendment, future mesne profits is treated as distinct subject and on the analogy of s. 17 an additional court-fee is levied on such claim. If, as per the unamended Act, the future mesne profits is clubbed with past mesne profits, and the fee is computed thereon, giving credit to the court-fee already paid, the amount that will be found payable by the decree-holder would in many cases be found less than what he would have to pay, if, according to the Madras amendment, the fee is calculated on future mesne profits as a distinct entity by itself, and such an amount as would be payable by a plaintiff if

in Victoria, the leader of the Opposition enunciated the desire to obtain recognition from the League or foreign powers generally of the right of the Dominions to remain neutral, suggesting that South Africa would support this view, and even thinking that the Commonwealth might do the same, which is patently absurd.<sup>1</sup>

### § 8. *Dominion Foreign Relations apart from League Affairs*

Outside the actual sphere of League operations the Dominions remain essentially in their former status regarding foreign affairs. In no territory is this more emphatically asserted than in New Zealand, where any attempt to have direct diplomatic relations has been emphatically repudiated by successive Prime Ministers and by the Attorney-General and the Solicitor-General.<sup>2</sup> In Canada, on the other hand, following the footsteps of Sir W. Laurier, Sir R. Borden<sup>3</sup> has spoken of the consular officers of the great powers in Canada as fulfilling diplomatic or semi-diplomatic functions. A further development of this idea was at once seen on the close of the war. There had long been current in Canada the idea that there should be a special diplomatic representative of the Dominion at Washington. Mr. Blake in 1882, Sir R. Cartwright in 1889, and Mr. Mills in 1892, all stressed the importance of securing such special representation, and Mr. D'Alton McCarthy proposed in the latter year the appointment of a representative of Canada on the staff of the Minister at Washington whose special duty would be to safeguard Canadian interests; but an amendment by the Government<sup>4</sup> suggesting prior discussion with the Imperial Government was carried, and, as has been noted, Sir W. Laurier in December 1909 held that Mr. Bryce's services rendered any such appointment then needless, though he also regarded Consuls as having attained semi-diplomatic status. In 1918, however, by Order in Council under the *War Measures Act* a

<sup>1</sup> See further, Part VIII, chap. iii, §§ 7, 8; Part V, chap. x, § 4.

<sup>2</sup> See especially Sir John Salmond, *New Zealand Official Year-Book*, 1925, pp. 781-3.

<sup>3</sup> Sir W. Laurier, 7 Dec. 1910, *Deb.*, 1910-11, p. 953; Sir R. Borden and Japanese Consul-General as to accession of Canada to the Anglo-Japanese Treaty of 3 Apr. 1911, *Deb.*, 1912-13, pp. 6958 ff, 7550; *Canadian Const. Studies*, pp. 127 f.

<sup>4</sup> It is point of fact in 1887 inaugurated the practice of informal arrangements with United States ministers; cf. Skelton, *Sir Wilfrid Laurier*, i. 373.

Memorandum of appeal against a final decree under O. 20, r. 12 (2) C. P. C., in respect of subsequent mesne profits, should be stamped with *ad valorem* court-fee calculated on the amount of mesne profits in dispute. *Pilla Balaram Naidu v. Pilla Sangam Naidu*, 45 M. 280 = 69 I. C. 722 = 14 L. W. 730 = 42 M. L. J. 184. Where an appeal is preferred from a decree granting future mesne profits the fee payable on the memorandum of appeal is to be calculated as up to the date of appeal. *In re Punya Nahako*, See 50 M. 488.

**Interest**—There is no provision in the Act under which a plaintiff can be called upon to pay court-fee on the interest which accrues after the institution of the suit. The holder of a mortgage decree who has already paid court-fee on the amount due at the date of the suit can execute a decree for a higher amount on account of interest *pendente lite* without being liable to pay additional court-fee thereon. *Thakan Chaudhuri v. Lachmi Narain*, 152 I. C. 244 = 15 Pat. L. T. 548 = 1934 Pat. 571 (S. B.) In a suit on a mortgage a decree was passed by the lower court for an amount less than the amount claimed in the plaint. On appeal the High Court decreed the full claim with interest and the amount according to the High Court's decree came to much in excess. It was held that there was no provision in the Court-Fees Act under which a party may be called upon to pay additional court-fees upon the excess found due by the appellate court and the judgment having been passed, the office cannot refuse to draw up the decree in terms of the judgment. *Debi Lal v. Koleshar Gir*, 105 I. C. 395 = 1928 Pat. 58. The section does not apply in the case of interest that accrued on the decretal amount. *Krishna Row v. Antaji Virupaksha*, 12 Bom. H. C. R. 227. There is no provision of law authorising the assessment of additional court-fee by reason of the accrual of interest *pendente lite* where the plaintiff appeals. But in an appeal by the defendant it may be otherwise. *Sadhu Sareni v. Lala Brahmdeo Lal*, 103 I. C. 592 = 1927 Pat. 230.

## Jurisdiction.

**1. Suits.**—In cases where it is open to the plaintiff to fix an approximate valuation of his suit as in the cases contemplated by this section, *viz.*, suits for accounts, determination of mesne profits and so forth, the question arises as to whether the court is competent to pass a decree which goes beyond the limit of its pecuniary jurisdiction. On this point there is a conflict of views between the several High Courts. One view is that the Court has jurisdiction to pass such a decree in case it had such jurisdiction at its inception. This is the view in ALLAHABAD, MADRAS, BOMBAY and SIND. A contrary view is that a court though it had jurisdiction when the approximate value given by the plaintiff was within it, it is incompetent to pass a decree in case the amount to be decreed is beyond the limit of its pecuniary jurisdiction. This is the view in CALCUTTA, and PATNA follows suit as the latter is only a portion carved out of the jurisdiction of the CALCUTTA High

explained that the Minister would be duly accredited to the President by the King; that his sphere of action would be confined to affairs relating exclusively to the Free State, on which he would form the ordinary—not the only—channel of communication. Matters which were of Imperial concern or affected other Dominions in the Commonwealth in common with the Irish Free State would continue to be handled by the Embassy.

The arrangements proposed by His Majesty's Government would not denote any departure from the principle of the diplomatic unity of the Empire. The Irish minister would be at all times in the closest touch with His Majesty's Ambassador, and any question which may arise as to whether a matter comes within the category of those to be handled by the Irish minister or not would be settled by consultation between them. In matters falling within his sphere the Irish minister would not be subject to the control of His Majesty's Ambassador, nor would His Majesty's Ambassador be responsible for the Irish minister's action.

Naturally it was not proposed that the Irish Minister should represent the Empire in the absence of the Ambassador, and there seems to have been no suggestion that the Minister would be able to conclude treaties with the United States on any other than the usual conditions, the issue of full powers by the King, while ratification would be subject to His Majesty's approval, in both cases the Imperial Government advising His Majesty, though of course the primary advice is that of the Free State. The actual experience of the Free State Minister does not seem to indicate that any special value attaches to such appointments.<sup>1</sup> Canada, however, is in a different position, and in 1926 announced the appointment of Mr. Vincent Massey as Envoy Extraordinary and Minister Plenipotentiary, and he visited England for discussion with His Majesty's Government to arrange co-operation with His Majesty's Ambassador.

The essential unity of the diplomacy of the Empire was proved shortly after 1919, when the matter seemed dubious in view of the creation of the League, by the procedure followed at

<sup>1</sup> Cf. Borden, 3 *Can. Bar Review*, 518 ff. Lord Curzon doubted the whole proceeding, citing the adverse view of Messrs. Bruce and Massey at the Imperial Conference of 1923, but Lord Haldane defended it in the Lords, 25 June 1924. Cf. Allin, 10 *Minn. Law Rev.* 118 ff.

is a manifestly reasonable view to take of the matter that although a plaintiff is almost *ex necessitate* permitted at the initial stage to value his claim approximately and obtain in the end a decree for a higher sum than what he had expressly claimed, when he instituted the suit in a court of limited pecuniary jurisdiction he must by implication be taken to have restricted the highest for which he could possibly obtain a decree as the limit fixed by the legislature as the limit of the pecuniary jurisdiction of the court.

But the case of future mesne profits and the consequent increase in the value of the decree to the plaintiff stands on a different footing altogether. It has been held in *Bidhyadar Manindra Nath*, 53 Cal. 14 F. B. = 1925 Cal. 1076, that where a suit is brought for the recovery of possession of land, and mesne profits *pendente lite* are either claimed or assessed at a sum beyond the pecuniary jurisdiction of the court, the court has still jurisdiction to fix such mesne profits and pass a decree for a sum beyond its pecuniary jurisdiction. The value of such a suit for purposes of jurisdiction is the value of the immoveable property plus mesne profits up to the date of the suit where such profits are claimed. If a suit is rightly entertained as within the jurisdiction of a court and a decree passed, its power to grant the proper and adequate relief is not affected by any event which increases the value of the relief during the pendency of the suit. The value of such a suit for the purposes of jurisdiction is the value of the immoveable property plus mesne profits up to the date of the suit. Mesne profits after the date of the suit do not form part of the cause of action on which the suit is brought.

**Patna.**—Of course the view of the Patna High Court only echoes that of the Calcutta High Court as has been more than once expressed by their Lordships of the Patna High Court that as the jurisdiction of that Court was carved out of the jurisdiction of the Calcutta High Court, settled views of the latter court are usually followed by Patna.

**Allahabad.**—In *Madho Das v. Ramji Patall*, 16 A. 286, it was held that the pecuniary jurisdiction of a civil court on its original or appellate side is, ordinarily speaking, governed by the value stated by the plaintiff in his plaint. And if a suit having regard to the valuation in the plaint, is within the jurisdiction, such jurisdiction is not ousted by the court finding that a decree for a sum exceeding the limit of its pecuniary jurisdiction should be given to the plaintiff. In *Sudarshan v. Ram Prasad*, 33 A. 97, it was held that where a suit as filed is within the pecuniary jurisdiction of a court, the jurisdiction of the court is not ousted by the subsequent discovery that a sum is in fact due to the plaintiff exceeding the pecuniary limits of the jurisdiction.

**Bombay.**—The Bombay High Court takes the same view as the Allahabad High Court. The mere fact that a decree for an amount exceeds the pecuniary limit of the jurisdiction of the court passing it, is not sufficient to establish that it was beyond the jurisdiction and

came through the Foreign Office, and was not even treated as sufficiently of a League character to be sent direct.<sup>1</sup>

Apparent confirmation was for a time given to General Smuts's views by the news of the conclusion of the treaty between Canada and the United States of 2 March 1923,<sup>2</sup> regarding the halibut fisheries off their coasts. The *Cape Times*, a zealous propagandist of General Smuts's views, hailed the episode as disposing entirely of the contentions of the writer as to Imperial unity, insisting that the Dominion Government had concluded the treaty of its own authority with the United States, forbidding all British subjects to engage in the fisheries in the close season, and despite this fact declining to allow the British Ambassador to share in the signature of the treaty. The old idea of the Empire as body politic was gone, it consisted merely of separate States with one sovereign directly advised by the Ministry in each State. It is perhaps significant of the degree of confidence felt in the validity of the argument that a reply to this attack pointing out that the facts had been entirely misapprehended, and that wholly misleading conclusions had been drawn from them, was not inserted. The facts, of course, were completely other; the treaty was negotiated by the Dominion Government through the Ambassador at Washington with the full approval of the Imperial Government, and the only point which ever arose was whether the treaty concluded should be signed under the usual full powers issued by the King on Imperial advice by the Ambassador and a Canadian representative, or by the latter alone. The Canadian contention, though doubtless it was not well understood in the United Kingdom or Canada, was perfectly simple. The convention clearly by its terms concerned Canada alone, and, if there had been a Canadian Minister at Washington as agreed on in principle in 1920, he alone would have signed it; it therefore followed that it should be signed only by a Dominion representative. On the other hand, the United States Senate desired to add a rider to the treaty making it one applicable to the subjects of the King in general, in which case signature by the British Ambassador would have been normal in addition to

<sup>1</sup> Cf. Keith, *Constitution, Administration, and Laws of the Empire*, pp. 46 ff.; *J. O. L.* v. 161 ff.; *Canadian Annual Review*, 1922, pp. 39-42.

<sup>2</sup> *Parl. Pap.*, Cmd. 2377; Keith, *J. O. L.* vi. 135 f.; vii. 200 f.

him on taking unsettled accounts he must state *approximately* the amount sued for. These provisions make it clear that the plaintiff has a right to value the relief he claims in suits for accounts which value can only be approximate as very often he may not be in a position to fix with any precision the amount which finally he may be entitled to. There is another class of suits, *viz.*, those for recovery of mesne profits where also the plaintiff may not be in a position to know precisely what amount he is entitled to. In this case also the plaintiff is entitled to claim a certain amount approximately and is bound to pay court-fees on that amount in the first instance. In these two classes of suits the plaintiff can obtain a decree for more money than what he has approximately claimed in the plaint, and as the basis of assessment for court-fees is the amount which he claims, and in cases where he gets more than what he approximately claims, what he in fact gets, he is obliged to pay for the extra amount which he has obtained; and this obligation is enforced by certain penalties (*see* s. 11 of the Court-Fees Act.) It is to be observed that the levy of the extra fee does not necessitate any amendment in the valuation of the suit and does not affect the validity of the adjudication. In certain cases, which after the change introduced in the new Code of Civil Procedure cannot now happen, the suit itself may be dismissed for non-payment of the extra court-fee. In those classes of cases, it is obviously inconvenient if not impossible, to change the value according to the actual amount found to be due, for the amount may be varied in appeal which again may be varied further in appeal till you reach a final adjudication in a court of last resort which may not be *res judicata* on a retrial of the same matter in a court competent to take cognizance of the suit according to that adjudication. The court which has jurisdiction to try the original suit must then depend on the amount or value of the subject matter of the suit as fixed by the plaintiff and amidst the conflict of opinions on other matters there is none on this. The further question is, can the amount or value of the subject-matter change or be changed by the plaintiff, so as to affect (a) the jurisdiction of the trial court, (b) the power of the court to give relief in accordance with its adjudication even though the value of such reliefs exceed the pecuniary limits of its jurisdiction, (c) the forum of appeal. \* \* The value of the subject-matter of the suit must be its value at the institution of the suit (O. II, r. 3, clause 2); for instance in a suit for recovery of ryotwari land, the fact that Government increased the assessment during the pendency of the suit cannot change the value so as to affect the jurisdiction of the court. \* \* We are therefore of opinion that in every case when the court is seized of jurisdiction it cannot and does not lose it by any change in the value of the subject-matter of the suit after the institution of the suit or by the precise ascertainment of its value in cases which do not admit of such ascertainment at the time of institution, except when the plaint is allowed to be amended; and that is not really an exception. \* \*



cerned should take pains to ascertain whether any other Governments were interested in the subject matter of the negotiation, in order that their interests might be secured. As regards other treaties proper, the Conference agreed that negotiations ought not to be undertaken by any Government without due consideration of the possible effect of the negotiations on other parts, or the whole, of the Empire. If the interests of other parts appeared to be affected, then each of the Governments of these parts should be informed of the proposed negotiation, in order that it might express its views and, if the matter were important enough, arrange to be represented. If more Governments than one were represented, they should follow the model of general International Conferences where there was a British Empire delegation, and freely discuss all points arising, while other parts of the Empire, not actually represented at the discussions, should be kept informed of the progress of negotiations.

As regards signature of treaties, it was agreed that, when obligations were imposed on one part only of the Empire, the treaty should be signed by representatives of its Government acting under full powers, indicating the part of the Empire concerned, care being taken in the preamble and text of the treaty to make its application clear.<sup>1</sup> Where obligations were imposed by a bilateral treaty on more than one part, it should be signed by one or more plenipotentiaries on behalf of all the parts concerned. In the case of general treaties negotiated at International Conferences the existing practice of signature for all the parts concerned should be adhered to, the British representatives signing generally, those for the Dominions and India each for his own Government. As regards ratification the existing practice was to continue, under which ratification is expressed in the case of a treaty affecting one part of the Empire only at the request of that part, and in the case of treaties affecting more parts than one ratification is effected only after consultation between the Governments of the parts concerned. It was agreed to leave to each Government concerned the obligation of deciding whether it must have Parlia-

<sup>1</sup> The Canadian treaty regarding the Pacific Halibut Fisheries was accordingly issued *ex post facto* in *Parl. Pap.*, Cmd. 2377, as a treaty between Canada and the United States. Canadian approval of the resolutions of 1923 was formally accorded by Parliament on 21 June 1926.

sum, to have his case tried by the court of the lowest jurisdiction and then to obtain a decree for a sum much in excess of the amount which the Legislature had fixed as the highest limit of the pecuniary jurisdiction of that court, and it would also lead to a further difficulty of deciding the forum of appeal against such decisions. *Gulab Sundari Debi's case* has been followed and acted upon by the Calcutta High Court in *Panchoram Teckadar v. Kinu Haldar*, 40 C. 56 = 15 I.C. 252; *Bubendra Kumar Chakravarti v. Poornachandra Bose*, 43 C. 650 = 8 I. C. 34; *Sarada Sundari Basu v. Akramanessa Khatun*, 51 C. 737 = 1924 Cal. 783 = 71 I. C. 747 and in *Herigi Bai v. Jamshedji*, 21 I. C. 783 = 15 Bom. L. R. 1021, a bench of the Bombay High Court consisting of Sir Basil Scott, C. J. and Beaman J. have expressed their complete agreement with the view of Mukerji J. On the other hand both the Allahabad High Court and the Madras High Court have taken a contrary view and have held that court of limited pecuniary jurisdiction is competent to pass a decree for an amount in excess of its pecuniary limits, provided it had jurisdiction to entertain the suit at its inception." *Madho Das v. Ramji Patak*, 16 A. 286; *Sudharsana Das Sastri v. Ram Prasad*, 33 A. 97 = 7 I. C. 385; *Khudajiatul Kubra v. Amina Khatun*, 46 A. 250 = 1924 All. 388 = 80 I. C. 413; *Ratnaswami Chetti v. Ratnambal*, 27 M. L. J. 388 = 1 L. W. 446 = 24 I. C. 135 and *Putta Kanyya Chetti v. Rudra Batala Venkata Narasyya*, 40 M. 1 = 39 I. C. 439 = 32 M. L. J. 228 = 5 L.W. 580. *Prima facie* the theory propounded by Mukerji J. in *Gulab Sundari Debi's case* would appear to be based on cogent reasons. \* \* There is no express provision in any of the statutes declaring that when the court is once seised of a case, it shall not grant relief either primary or incidental which the parties are found entitled to or that it shall be limited to passing a decree for recovery of an amount which is not in excess of Rs. 5,000. \* \* There are however, authorities for holding that in the absence of the consent of the plaintiff, it is not open to the judge to strike out a part of the claim of the plaintiff in excess of the pecuniary limits of the court and that no presumption can, therefore, arise that the plaintiff has impliedly relinquished such excess by merely instituting his suit in a court of limited jurisdiction. The argument that unless it is presumed that the plaintiff had relinquished a part of his claim, or unless it is held that the inferior court cannot pass a decree for an amount in excess of its pecuniary limits, it would enable the plaintiff to commit a fraud on the court and leave it open to the plaintiff to have a case tried by an inferior court by valuing his claim at an insignificant amount may be successfully put in different ways. In the first place, it is always open to the defendant to challenge the valuation at the proper time and for the court to afford him adequate relief if the court finds that the plaintiff has intentionally undervalued the claim. It would also appear that in certain cases even where the plaintiff has properly valued his relief, the court is called upon to adjudicate upon the claims of the defendants *inter se* or the claim of the defendants against the plaintiff in respect of the amounts far in

Canada, and the arrangement was styled a ' Convention between Canada and the United States of America ', while its application to Canada was clearly made known in its terms.<sup>1</sup> Similar forms were adopted in the Treaty of 24 February 1925 to define the Canadian boundary, in the supplementary Extradition Treaty of 8 January 1925,<sup>2</sup> and in the very important agreement of 24 February 1925<sup>3</sup> regarding the regulation of the level of the Lake of the Woods, which is based on recommendations of the International Joint Commission under the Boundary Waters Treaty of 1909. That Commission under its wide powers has formed an invaluable body for adjusting American and Canadian views,<sup>4</sup> having since its organization in 1912 settled twenty-five contested points referred to it unanimously, and the great issue of the development of the St. Lawrence waterway for ocean shipping and the generation of electric power has been considered by it, though difficulties in executing the scheme exist.<sup>5</sup>

Canada has also concluded a Commercial Treaty of 3 July 1924<sup>6</sup> with the economic union of Belgium and Luxembourg through the Consul-General of Belgium, in all these cases full powers and ratifications being exchanged as usual. In the case of other treaties, as the commercial arrangement with France of 1922<sup>7</sup> and with Italy<sup>8</sup> in 1923, the Imperial Government was also represented, the treaties being negotiated, the one at Paris, and the other in London. In either case the negotiations were performed by the Canadian Ministers alone.

On the other hand the Imperial Government remains in possession of power to bind the whole Empire by its signature of treaties, though under the principles of 1923 it is bound constitutionally—not in international law—to obtain the assent of the Dominions to matters binding them. An excellent

<sup>1</sup> *Parl. Pap.*, Cmd. 2512. The words ' in respect of ' are very significant.

<sup>2</sup> *Ibid.*, Cmd. 2513.

<sup>3</sup> *Ibid.*, Cmd. 2511. See Cmd. 2510 for the boundary treaty.

<sup>4</sup> In 1923 Canada ceased to accord to the United States fishing vessels facilities to obtain supplies, trans-ship catches, and ship crews; *Canadian Annual Review*, 1923, pp. 52 f.

<sup>5</sup> *Canadian Annual Review*, 1923, pp. 55 ff, 1924-5, pp. 83 ff., where the episode of the Chicago Drainage Canal is discussed; 1925-6, pp. 116 f., 227, 335, 376.

<sup>6</sup> *Parl. Pap.*, Cmd. 2315. So with the Netherlands, 11 July 1924, Cmd. 2555.

<sup>7</sup> *Ibid.*, Cmd. 1985.

<sup>8</sup> *Ibid.*, Cmd. 2053.

*Sahai v. Mayavathi Kuer*, 1921 Pat. 69=60 I. C. 346, on the ground that O. XX, r. 12, of the Civil Procedure Code expressly authorises the trying court to determine such mesne profits and thereby confers jurisdiction on the court to pass a decree in excess of its limits. We are indebted to the eminent judge Mukerji, J., for a collection of the different definitions of "jurisdiction" referred to by him in *Haridynath Roy v. Ramchandra Barua Sarma*, 48 C. 138=59 I. C. 806, but none of those definitions goes so far as to provide what decree a court may or may not pass when it is once seized of the matters in dispute between the parties. Assuming that it is doubtful if the legislature did intend to confer jurisdiction on the court to pass a decree in excess of its pecuniary limits, the old maxim *Boni judicis est ampliare jurisdictionem*, should apply and the court should exercise such jurisdiction and pass such decree as the circumstances require so as to prevent a failure of justice which may otherwise result."

**Lahore.**—The view of the High Court of Lahore is set out in *Fazal Karim v. Municipal Committee, Jullander*, 1929 Lah. 107.

"Where a particular court has jurisdiction to try a suit at the initial stage and passes a preliminary decree for accounts, but its jurisdiction is ousted to deal with further proceedings later on when the amount found due is more than the court has jurisdiction to pass a decree for, a preliminary decree passed by the lower court is not without the jurisdiction of that court and is not void: \* \* When a court having jurisdiction to try a suit passes a preliminary decree for rendition of accounts, but its jurisdiction is ousted to deal with further proceedings, i.e., to pass a final decree for the amount found due, it being more than the court has jurisdiction to pass a decree for, the proper order for the appellate court is to *transfer* the case to the court having jurisdiction to try the suit and not to return the plaint for presentation to proper court. The order returning the plaint is revisable. \* \* When after passing of a preliminary decree for accounts, the case is transferred to another court to deal with further proceedings of the case, the former court having no jurisdiction to pass a decree for the amount found due, it is no doubt open to the latter court to consider the question of a *de novo* trial but that is merely a matter of discretion and the preliminary decree that has been passed must be taken into consideration as it cannot be set aside except in due course of law. The latter court to which the case has been transferred cannot ignore the preliminary decree and try the case from commencement. It can exercise its discretion to hold a *de novo* trial only from the stage after passing of the preliminary decree, but cannot go behind it.

**Rangoon.**—Where the amount for which the plaintiff is found entitled goes beyond the pecuniary jurisdiction of the court, then the proper view will be to return the plaint for presentation to the proper court. It was held in *Hardyal v. Ram Deo*, 2 R. 408, that where in a suit for accounts, the court entertaining it on the preliminary valua-

suggested, to show that the Treaty did not apply to the rest of the Empire. In point of fact the Treaty affected the Empire in several ways: it affected every British claim, making no reservation for those of Dominion nations; it provided for the recognition of certain treaties, including the Pacific Seal Fishery Treaty of 1911, which essentially interested Canada; it bound all British subjects to recognize an extension of Russian rights of exclusive fishery; and the whole Empire was meant to be included in the undertaking not to permit hostile propaganda. No effort was made in the Treaty to exclude its operation from the Dominions, and the matter was the more striking in that the contemporaneous commercial treaty<sup>1</sup> contained the usual clauses for separate adherence and withdrawal. Precisely the same thing happened in 1925 as regards the general and the commercial treaties with Siam, though the ordinary form of designation of the contracting parties was adopted.

The position, however, of the Dominions under treaties which they do not sign separately is one of obscurity, which, however, has been considerably cleared up as the result of events in 1924, which again arose from events in 1922.<sup>2</sup> In that year, as the result of the folly of the Greeks, France's ill-will towards the Empire and efforts to obtain advantages for herself—which luckily recoiled on her own head—and the pre-Fascist feebleness of Italy, the Turkish Government succeeded in advancing victoriously on Constantinople. The British Government showed courage and determination, but its attitude to the Dominions was incomprehensible. Without any preparation, on 16 September 1922 it issued an appeal to them to send contingents to support it in resisting an attack on the Straits, the public announcements being made a few hours after secret telegrams, which the ministries were not allowed to disclose to their Parliaments, had been dispatched asking for aid. It speaks volumes for the good sense of the Dominions that they took the shock as well as they did. Mr. Hughes promised the aid of a contingent, and on the 19th and 29th explained as best he could the situation to his Parliament, which, of course,

<sup>1</sup> *Parl. Pap.*, Cmd. 2216, 2261; Keith, *J. C. L.* vii. 106 f.; for false conclusions based on the mention of Great Britain and Northern Ireland in the Treaty, see Keith, vii. 200 f. This ridiculous style was promptly dropped, with the Treaties themselves.

<sup>2</sup> Cf. *J. P. E.* iv. 94 ff., 101.

Rangoon to return the plaint for presentation to the proper court. The matter is thereby simplified and the suit consequently becomes instituted in a court of competent jurisdiction. The Calcutta High Court has met the difficulty by staying the hands of the trial court by directing it to pass a decree only up to the limits of its pecuniary jurisdiction. Here also any doubt as to what the proper forum of appeal is cannot arise, except in cases where the suit is tried by a court of unlimited pecuniary jurisdiction as for instance a Subordinate Judge's Court in Madras. In that case the question might arise when the appellate forum differed as regards the amount of the claim or decree, as to which is the proper forum.

**Calcutta.**—The view of the Calcutta High Court is that it is the amount decreed by the first Court as the amount due to the plaintiff that determines the forum of appeal. *Ghulab Khan v. Abdul Wahab*, 31 C. 365; *Ijijatulla v. Chandra Mohan*, 34 C. 954 F. B. Where the value of the mesne profits decreed taken along with the value of the land exceeds Rs. 5,000, though the suit was valued at less than Rs. 5,000, by the plaintiff, an appeal from a decree therein lies to the High Court. *Jogendra Nath v. Ramgopal*, 1927 Cal. 616.

**Bombay.**—The view is the same as in Calcutta. See *Ibrahimji v. Bejanji*, 20 B. 265.

**Allahabad.**—The Allahabad High Court agrees with that of the Calcutta and Bombay views. (See *Goswami v. Bohra Desraj*, 32 A. 222) but adds a reservation to it, to the effect that it is the amount determined by the first court as the amount due to the plaintiff and accepted by the plaintiff by payment of additional court-fee that determines the forum of appeal. This observation that the amount accepted by the plaintiff is to determine the forum of appeal is, it is submitted, with due deference, not quite clear. It is difficult to understand as to what is really meant by that expression. It was also felt by their Lordships of the High Court of Madras in 40 M. 1 where their Lordships comment on that expression as follows: "The difficulty of accepting this position as correct is equally great. What happens if the plaintiff does not accept the amount ascertained to be due? How is he to signify his acceptance? Till his acceptance, what is to be the position of the defendant if he wants to appeal? As far as we have been able to examine the cases, no satisfactory answer is obtainable to any of these questions. Let us take a concrete case. Suppose a suit for accounts is instituted in a Subordinate Court with unlimited pecuniary jurisdiction and the plaintiff values his claim at Rs. 3,000. The court gives him Rs. 4,000. Neither the plaintiff nor the defendant is satisfied; the plaintiff wants Rs. 6,000 and the defendant says that nothing is due. To what court should the defendant appeal and to what court the plaintiff? Suppose the defendant wants to appeal; how is he to ascertain if the plaintiff accepts the valuation or not? Suppose the defendant appeals first, his appeal must

alone, but naively on 22 February and 21 March 1924 asked the Dominion Government to signify concurrence in the ratification of the Treaty and Conventions involved. The Dominion Government replied on 24 March, that, as Canada had not been consulted, had not sent representatives, had not signed, it could not ask Parliament to approve ratification ; ' without the approval of Parliament, they feel they are not warranted in signifying concurrence in ratification of the Treaty and Conventions. With respect to ratification, however, they will not take exception to such course as His Majesty's Government may deem it advisable to recommend '. They held that the case must be held to fall under the description of a bilateral treaty imposing obligations on one part of the Empire only. The meaning of this perfectly constitutional attitude has been repeatedly misrepresented. As pointed out by the writer,<sup>1</sup> and as later accepted in express terms by Mr. Mackenzie King,<sup>2</sup> the Canadian Government held that, if it were not asked to take part in any treaty, it must be assumed that the obligations of that treaty were predominantly concerned with the Imperial Government, and that accordingly Canada must retain absolute freedom to decide if, in the event of any difficulty arising under the treaty her aid were asked, she would take any active steps. This is in entire contrast to her position in cases where she has been consulted ; in these she signs and takes the full obligation resulting. Her consent to ratification was perfectly consistent ; she has never disputed the fact that the Crown is fully sovereign and can make war and peace ; the Treaty of Lausanne by the British signature and ratification bound Canada, but it did not impose upon her any constitutional obligation to send troops to vindicate its terms, e. g. those as to the freedom of the Straits. It may be added that the other Dominions were satisfied to act on the model of Canada, and not one of them, though it was declared in the British House of Commons that they were anxious for ratification, undertook any obligation to support the Imperial Government in respect of the Treaty.

<sup>1</sup> *The Times*, 26 April 1924 ; *J. C. L.* vi. 194.

<sup>2</sup> *Commons Deb.*, 9 June 1924 (p. 3051). At the Imperial Conference of 1926 Mr. King similarly made no claim of independent status. Constitutional usage and international law are quite different things, and it is only confusing to ignore that fact, as even Lewis, *B. Y. B. I. L.*, 1925, pp. 30-44, inclines to do.

*Jaswant Ram v. Moti Ram*, 7 Lah. 570 = 1926 Lah. 376 and *Lal Chand Mangal Sain v. Behari Lal Mehar Chand*, 5 Lah. 288 = 1924 Lah. 425, merely lay down that in suits for possession of land the amount fixed by the trial court as payable by the plaintiff to the defendants as a condition precedent to his getting possession is the amount that determines the forum of appeal. In other words, it is the value of the subject-matter of the suit as finally determined by the decree of the court on which the determination of the Court of Appeal depends."

**Madras.**—The view taken by the High Court of Madras is the same in the case of appeals as in the case of suits. That is set out in *Kannaya v. Venkata*, 40 M. 1, where their Lordships observed as follows:—The remaining point is as to the forum of appeal. We think that the same simple rule should be applied, *viz.*, that the amount or value of the subject-matter as fixed in the plaint should determine the court to which the appeal lies. It is to be observed that the words "amount or value of the subject-matter of the suit" occur both in ss. 12 and 13 of the Civil Courts Act and the words should be given the same meaning in both the sections in the absence of any indication either from the context or otherwise that they were used in different senses; in this case, apart from the general rule of construction, it will be clear that the words are used in the same sense when it is remembered that the value determined both the trial court and the court of appeal, the intention of the legislature obviously being that the value when once ascertained and settled should remain the same for both purposes. The rule is not only simple and capable of easy application to all cases but is also right on principle. As pointed out by that eminent Judge Sir Bashyam Ayyangar in *Krishnamachariar v. Mangammal* the theory of an appeal is that the suit is continued in the Court of Appeal and reheard there. In the Court-Fees Act a special provision is made for the levying of additional fees on the plaint when the suit comes before the Court of Appeal—observe the language—if that court finds that the suit has been undervalued. If the *value of the suit* does not change while it is in the first court, there is no reason to hold that the value changes when the same suit is taken to the Court of Appeal. According to the High Court of Madras, it is the amount or the value of the subject-matter as fixed in the plaint, though approximately, that determines the court to which the appeal lies, and not the amount decreed. *Kannayya v. Venkata*, 40 M. 1 = 39 I. C. 439 F. B.

**Patna.**—Where a suit is dismissed by the first court—and in that case the mesne profits remain undetermined—the sum stated in the appeal determines the forum of appeal. *Staya Kinker v. Raja Prasad Singh*, 52 I. C. 452 = 4 P. L. J. 447.



which, perhaps in retaliation, adopted the procedure of conveying to Mr. A. Yazikoff a formal notification of Canadian recognition on 24 March, though this action can only be set down as a mere nullity. More satisfactory was the fact that on 19 August Mr. Bruce was able to assure the Commonwealth Parliament that he had received assurances that the laches on the part of Mr. MacDonald would not be repeated. It may be noted that the Republican Government in Greece was similarly recognized, without consultation with the Dominions, and the overriding of the rights of Egypt and the resulting destruction for the time being of the constitutional system, and the assistance given to the King to usurp power, were matters fortunately without Dominion sanction. The discussions in the Imperial Parliament revealed how singularly unable were most of the members of the Government and Opposition alike to understand that the Dominions had passed the stage when they could be expected to accept the wisdom of actions of any Government which domestic issues might temporarily place in power in the United Kingdom.

The advent of Mr. Baldwin's administration to power showed an improvement in recognition of Dominion status, little or nothing having been done hitherto to make good Lord Milner's repeated talk (e. g. on 9 July 1919) about absolute equality—which he must have known to be fancy at the time. An effort was made to secure an Imperial Conference to discuss the protocol of 2 October 1924, but the Dominions were unable to concur, and the matter was disposed of by correspondence. Matters then moved towards the Locarno Pact, but the Dominions were not associated in the negotiation. It was indeed impossible to secure their action in that sense; the essence of the scheme being fresh obligations as to European guarantees, *the Dominions could not be expected to be willing to commit themselves in any way by sending representatives, even if the difficulties as to arranging for their presence could have been overcome, as would doubtless have been the case*<sup>1</sup> if there had been any real chance of securing Dominion acceptance of the pact. The new arrangements achieved, therefore, at

<sup>1</sup> The official plea of difficulties with foreign countries is convenient, but quite unconvincing; difficulties disappear if there is any inducement to overcome them. See also Keith, *J. C. L.* viii. 125 f.

*purpose of section 7 shall not be deemed to be a question relating to valuation."*

### COMMENTARY.

**Object of the section.**—The section has been framed only in the interests of revenue (*Vide* cl. 2). *Tekana v. Alagiri*, 25 I. C. 506. It has been framed for fiscal purposes as is evident from the second clause which shows how a Court of Appeal may review the decision of the 1st court where there has been a loss of public revenue. *Peary Shah v. Suraj Mal*, 16 I.C. 575. "Clause 2 is enacted for the purpose of protecting the revenue." *Ladli Begum v. Ram Das*, 1925 Pat. 488 = 90 I.C. 321; *Gajendra Nath Saha Chowdhury v. Sulochana Chaudhurani*, 39 C. W. N. 131.

"The scheme of the section is to see that the revenue is not defrauded and that the proper fee payable to Government as the "price" of the trial of the suit has been paid" *Per* Wallace, J., in *In re Lakshmi Ammal*, 49 M. L. J. 608.

**Scope of the section.**—Under this section, the trial court alone has power to decide what is the proper valuation for purposes of court-fee: and the appellate court has a like power with regard to the memorandum of appeal even where the valuation by the trial court is different, and subject to the provision of cl. 2, the decision of such court is final. *Krishna Mohan v. Raghunandan*, 4 Pat. 336 = 87 I.C. 137 = 1925 Pat. 392.

The section has no application to the question of court-fees payable on a memorandum of appeal presented to the High Court, but only to the fees payable in courts other than those mentioned in Chapter II of the Act. (*Vide*, the heading of Chapter III in which the section occurs). *Krishna Mohan v. Raghunandan*, 4 Pat. 336 (F.B.)

**Finality of decision re court-fees: Sections 5 and 12 of the Act.**—The term "final" means that it is final between the parties to the suit and the finding could not be assailed in appeal or revision at the instance of the aggrieved party. In s. 5 of the Act, also, the word appears; and there it is provided that the decision of the taxing officer or the taxing judge is final. And that section applies to the High Court. But there is a difference between the finality as contemplated in s. 5 and this section. The former section applies to cases where any difference arises between the officer whose duty it is to see that the proper fee is paid and any suitor or attorney, while in this section the decision is final, as between the parties to the suit.

Besides, the language of s. 12 is different from that of s. 5. Two questions arise with respect to a document filed, exhibited or recorded in or received, or furnished by a High Court, namely, (1) the necessity of paying a fee and (2) the amount of fee payable. Under s. 12 it is merely the decisions of the subordinate courts as to valuation and not as to the category, in which the suit or appeal falls which is final.

agreement between the Government of Mozambique and the Union of South Africa of 1923, which is wrongly treated in its published form as a Convention between the United Kingdom and Portugal.<sup>1</sup>

### § 9. *The Imperial Conference of 1926*

Something was done by the Imperial Conference of 1926 to simplify the issues. The working of the system of treaty-making as fixed in 1923 was reviewed and its worst defects remedied, though the principle was accepted as on the whole adequate. One fundamental defect of the earlier arrangement was the fact that, while it approved separate negotiations by the Dominions, and enjoined on each to consider how far other parts of the Empire might be affected by its action, it left it to the negotiator to decide whether any other part was interested. It is now requisite<sup>2</sup> that information of an intended negotiation should be sent to the other parts of the Empire, members of the Imperial Conference, and each of these parts must with reasonable promptness express its views; if none are expressed, the negotiating part may safely proceed, but it must obtain the positive assent of any part of the Empire if actual obligations are to be imposed on that part, a rule the meaning of which is easily understood by reference to the case of the Halibut Fisheries Treaty of 1923. Where ratification is desirable for the whole of the Empire, it will be legitimate to assume that it can be expressed, unless objection has been made, and, if any part desires that ratification should take place only in respect of a treaty signed by a plenipotentiary for it, it must appoint such a plenipotentiary.

More important still was the decision to improve the form of treaties. Those entered into under the aegis of the League have often been expressed in the inconvenient form of mentioning the British Empire as one unit and then giving separately

<sup>1</sup> Ibid., Cmd. 1888; Keith, *J. C. L.* v. 168. The Angola boundary was settled direct; Cmd. 2777.

<sup>2</sup> Note that under the new rule the Irish Free State and Canadian Ministers at Washington cannot conclude conventions without informing the British Ambassador; they are thus controlled: (i) they are appointed with the sanction of the Imperial Government; (ii) they cannot negotiate behind its back, and their full powers to sign are derived from it; (iii) their negotiations must be ratified with Imperial assent. Their governments are in like case.

second schedule, is an application presented to a High Court. The fee therefore repayable may be part of the fee paid upon an application for review in the High Court as the section now stands. But this also, it must be remembered, is a piece of patch work legislation. In the Act as originally passed, the words "plaint or memorandum of appeal" appeared instead of the word "application" and although the word "application" was substituted in place of the words "plaint or memorandum of appeal" by a later Act of the same year, it would appear that the fee actually recoverable under the Act as originally passed was part of that paid on the plaint or a memorandum of appeal. This was an obvious blunder and had to be rectified by an amending Act. As already stated in another connection, the drafting of this Act is somewhat unscientific and its interpretation certainly gives rise to considerable difficulty but even if there should be found in Chapter III an isolated instance of reference to fees payable in a High Court, the intention of the Act was to deal in that Chapter with fees payable in the subordinate courts only unless the contrary must necessarily be inferred from the context.

It would be an anomalous state of affairs if the High Court alone had no power to decide the question of valuation for the purposes of determining the amount of the fee chargeable on the memorandum of appeal presented before it, a power which the Lower Appellate Court possesses in determining the amount payable on its own memorandum of appeal. The scheme of the Act appears to be that, in the subordinate court under s. 12, the trial court alone has power to decide what is the proper valuation for the purpose of determining the fee payable on the plaint, and the appellate court alone has the like power with regard to the memorandum of appeal presented in that court, even if the trial court has arrived at a different valuation, and each court's decision is final subject to the provisions of the second clause of s. 12."

**Section defective.**—Not only is the section defective for the reasons already set out *supra* but it is also defective as there is a want of mutuality in the matter of rectification of mistakes in the matter of collection of court-fee.

"The power is given only to demand an additional fee in the interest of the revenue and does not in any way give relief to a suitor from whom the subordinate courts on account of any wrong decision as to valuation have levied a higher fee than was payable upon the plaint or memorandum of appeal in those courts, except in certain contingencies, arising under s. 13 of the Act. It would appear that the Act does not purport to give relief to a suitor from whom an improperly excessive fee has been taken in the subordinate Courts or in the High Court. Mahmud, J., while concurring with the decision of Edge, C. J., in *Balkaran Rau v. Govind Nath Tarwari*, says, "The enactment, as the learned Chief Justice has explained, is most ~~unhappy~~ to collect money from those who seek to obtain justice, but

of League conventions on the relations *inter se* of parts of the Empire had to be faced. It was finally held that the new plan of making treaties in the name of the King would obviate the possibility of arguing that the treaties were binding on the members of the Empire *inter se*, and thus also obviate the necessity of any special clauses in treaties to negative their application in this sense. Stress was laid on the fact that the issue had been discussed at the Arms Traffic Conference of 1925<sup>1</sup> and that the Legal Committee of the Conference laid it down that the principle that parts of the same Empire were not bound *inter se* by such arrangements underlay all such conventions. It was admitted, however, that parts of the Empire might be willing to apply some of the provisions of such conventions *inter se*, in which case this should be specially specified, and the cryptic rule was enunciated: 'Where international agreements are to be applied between different parts of the Empire, the form of a treaty between heads of States should be avoided', meaning doubtless that the agreements should be framed as mere governmental accords. It will be deduced that implicitly the arrangement negatives the claim of the Free State that her treaties with the United Kingdom are matters of international concern, to be registered with the League of Nations, and the insistence of General Hertzog and Mr. Fitzgerald on the status of the Dominions as independent nations of international law. Wisely the formal denunciation of these doctrines was not pressed, and it must be added that, however convenient the result, no argument appears to demonstrate convincingly the incorrectness as opposed to the grave inconvenience of the views of the Free State.

It must be admitted that the new rules offer abundant possibility of difficulty, for in effect they give a wide discretion to the chief negotiating authority, the Imperial Government, to assume agreement from the silence of a Dominion. The reason for this clause is obvious, the failure of the Dominions to express views on the matters communicated freely by the Imperial Government, but the solution is far from ideal. The Dominions ought rather to have been induced to accept the obligation of forming and expressing views on negotiations or ratification forthwith; it is incompatible with their status and their claims that they should

<sup>1</sup> Summarized in *B. Y. B. I. L.*, 1926, pp. 192-4.

applies to the facts stated in the plaint. In the first case it is more or less a question of fact that has to be determined by the court, and the Legislature has laid it down that the decision of the court in such matters shall be final. In the second case, different considerations arise, and the matter being purely one of law is capable of being examined by superior courts at the instance of either party. There is another aspect of this question. The order directing the payment of the additional court-fee was incorporated in the decree. It was therefore an essential part of the decree, and admittedly the decree was appealable to the District Judge. In other words, the decree being conditional on the performance of certain acts by the plaintiffs on the non-performance whereof it was to become void, and the direction relating to the performance of such acts being illegal, as held by the District Judge, the learned judge has jurisdiction to adjudicate upon the legality or otherwise of the condition imposed." See also *Mt. Parmeshri v. Panna Lal*, 1931 Lah. 378.

**Madras**—A decision as to the category to which a suit belongs is not final under s. 12 of the Act. The question is concluded by the authority of *Lashmi Amma v. Janamejayan Nambiar*, 4 M. L. J. 183. Per Venkatasubba Rao, J., in 48 M. L. J. 688. See also *Annamalai Chetti v. Lt. Col. Cloete*, 4 M. 204; *Champadan v. Kummi-mal*, 4 M. L. J. 173.

**Nagpur**.—See *Govind v. Vithabai*, 1925 Nag. 435=87 I. C. 911. "Section 12 applies only to a decision as to valuation of a suit, which falls within a particular class, and not to a decision as to the particular class in which the suit falls, that is to say, if there is no doubt as to the class in which the suit falls, and the section of the Court-Fees Act which applies to it, the decision of the first court as to the valuation which depends on the value of the property in suit is final: but if there is a dispute as to the class in which the suit falls, that is to say, the section of the Court-Fees Act which applies to it, an appeal will lie." The decision in 23 Bom. 486 set out above was followed.

**Oudh**.—See *Gumani v. Banwari*, 54 I. C. 733.

**Patna**.—"It has been held that a question of valuation does not include a question of category and although the two questions may in practice often overlap and a decision of a question of valuation for the purpose of determining the amount of fee chargeable may involve a decision on the question of category, a decision on a question of category is not final within the meaning of clause (1) of s. 12, while a decision on a question of valuation pure and simple as defined above is final as between the parties to the suit. The second clause of s. 12, however, gives a court of appeal power to collect deficit court-fees in respect of fees payable in subordinate courts and it seems now settled that the High Court as a court of appeal, reference and revision is competent to exercise this power in respect

clusion of the treaty, as for instance by the appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.' <sup>1</sup> The arrangement, it will be seen, is incoherent and incomplete. The doctrine of General Hertzog, as of General Smuts and of Mr. Doherty in Canada, that a Dominion can never be bound save by the signature of its own plenipotentiary, and that the Dominions are entitled *de plano jure* to separate invitations to, and representation at, International Conferences, is not admitted, and stress is laid evidently deliberately on the propriety of following the model of the proceedings of 1921 at Washington. The point of this is obvious. Unlike the plan of representation by distinct plenipotentiaries, it involves no difficulty with foreign powers. As long as the delegation is one, then its composition is entirely a matter for the governments of the Empire as a question of constitutional relations, not of international law. Separate delegations cannot be arranged without the assent of foreign powers, and it must be noted that, while the Conference secured that the League of Nations should be informed (9 March 1927) of the new manner of regulating the form of treaties agreed on, no suggestion was accepted of a general communication to foreign States regarding Dominion status, such as General Hertzog contemplated when he came to England. His mission, therefore, in its treaty and international status aspect, must be deemed to have completely failed of its purpose.

On the question of the general conduct of foreign policy it was frankly recognized that equality of status did not mean similarity of functions, and that in this sphere, as in that of defence, the major share of responsibility rested and must for some time rest with the Imperial Government, though all the Dominions were in some degree concerned with foreign affairs, especially in connexion with neighbouring powers, as shown by the necessity for the appointment of Mr. V. Massey as Canadian Minister Plenipotentiary at Washington <sup>2</sup> to take charge of

<sup>1</sup> Cf. Mr. Mackenzie King, Canadian House of Commons, 21 Nov. 1924.

<sup>2</sup> It is not now intended that he should act for the Ambassador in the absence of the latter. Mr. Mackenzie King objected to this idea on 30 June 1920 (*Commons Deb.*, p. 4540) and 21 Apr. 1921 (*Deb.*, p. 2410).

for the purpose of determining the amount of fee payable is *final*, between the parties. The history of the case-law traced below on this vexed question would clearly show the imposition of judicial interpretation on the statute, the provisions of which being thereby whittled down. (1) In the first place the decision on the question of valuation has been confined to questions of valuation pure and simple and held inapplicable to cases of determination of the question as to whether the court-fee is chargeable under one Article or Section of the Court-Fees Act or the other. Though the section uses the word "Valuation" alone, it has been judicially interpreted to be valuation as to amount and not as to category. Consequently one class of cases have been taken out of the purview of the section by the effect of judicial interpretations. (2) Again if the determination is not for the computation of the court-fees or rather is not merely for the computation of the fee but also for the determination of jurisdiction for instance, then the decision is not final. That is restriction number two grafted into this section. (3) Even in cases where the decision of the lower court steers clear of the above two reservations then too, the High Courts have been treating the decision as to court-fees as not final, inasmuch as they entertain not only Civil Revision Petitions to revise the order relating to court-fees but also appeals wherein the decision of the lower court as regards fees is questioned. This really knocks the bottom out of this provision in s. 12 (1), that such decisions are final as between party and party. Where the question of court-fee raised in the lower court relates to valuation and is decided, the decision may be in favour of plaintiff or against him. If it is in favour of plaintiff the prevailing view seems to be that it is not revisable as an appeal is stated to be available to the aggrieved party if the question involves one of jurisdiction, and if it is not, there is no aggrieved party. If it is against him it may be a mere order for payment of additional court-fee or it may go further and oust the jurisdiction of the court, in which case there will be the order returning the plaint for presentation to the proper court. If the order is one of payment pure and simple of additional court-fee then the order is revisable for it is held that if the order is wrong the relief should be granted to the aggrieved party forthwith. But there is also the dissentient view by some of the Judges of the High Court of Madras who held that an order directing payment of additional court-fee could not be revised as the lower court was only exercising its jurisdiction, when it passed that order and that any future order of the court, viz., rejection of the plaint which might result by the non-compliance by the plaintiff with the lower court's order could not be anticipated, as a failure to exercise jurisdiction vested in it by law. Anyhow the practice seems to be to revise such adverse orders against the plaintiff. Again the plaintiff might sit tight and refuse to comply with the order directing payment of additional fees. Then the plaint will be *rejected*, to use the words of the C. P. C., O. 7, r. 11, though the expression used



at a Dominion capital in a position to represent with authority the views of the Imperial Government. Fortunately the Conference shrank from drawing the doctrinaire conclusion that in each Dominion there should be a diplomatic representative of the British Government. Apart from the utter waste of money involved by these appointments, it is perfectly clear that the diplomat would often have nothing serious to do save enjoy himself, and that Dominion ministers would prefer to receive their news direct from the British Government or through their own representatives in London. On the other hand, in the case of Canada it is easy to understand that it might be of real value for the British Government to be able by personal touch through a representative at Ottawa to attain a fuller understanding of Canadian views than through a Governor-General. The common-sense conclusion, which was not attained, was that the Secretary of State for Foreign Affairs should communicate direct with the External Affairs departments of the Dominions, omitting the process of going through the Dominions Office. Mr. Fisher in 1911 was acute enough to see that the relations of the Dominions with the Foreign Office should ultimately become direct, and it is impossible to see how any useful purpose can be served by interposing a third party in the process. The fact that Mr. Amery continued to hold both the offices of Secretary of State for the Dominions and the Colonies caused a painful impression in Dominion circles, suggesting that the change was due to personal considerations<sup>1</sup> rather than grounds of state. There is little doubt that economy and efficiency alike would have been promoted by entrusting the one important function of the Dominion Office, the conduct of communications on foreign affairs, to the Foreign Office, whence it ultimately is derived, and giving the rest of the work to the Prime Minister aided by the President of the Council or other Minister. The allegation that the work which would fall on the Prime Minister on such a scheme would be serious is utterly untenable.

<sup>1</sup> On the retirement of the Permanent Under-Secretary in 1919 Mr. Churchill found himself unable to entrust the duties of the post to any member of the staff, and had to introduce an outsider without colonial experience. The burden of the duties proving too severe for his health, Mr. Amery, still unable to promote one of the staff, solved the impasse by dividing the office, and appointing an outsider with, however, much colonial experience, for the Colonial division, and a member of the staff to the Dominions division.

**Madras.**—"The terms of the 12th section of the Court-Fees Act ought not to receive a larger interpretation than they fairly admit of. They do not declare the decision of the court in which the plaint or appeal is filed, final on all questions which may arise respecting the court-fee, but on every question relating to *valuation* for the purpose of determining the amount of the fee. This may be a mere arithmetical calculation; it may involve the decision of a simple question of fact. On the other hand, apart from the valuation necessary to determine the amount of the fee, questions of much nicety may arise respecting the fee properly leviable on the suit; it is conceivable that the Legislature designedly prohibited appeal in the one case and permitted it in the other." *Annamalai Chetti v. Glocka*, 4 M. 204. In *Tikana Kavandan v. Alagiri Kavandan*, 25 I. C. 506, it was held that a decision on the question of court-fees by the court of first instance is final between the parties though it can be reopened by the Appellate Court in the interests of revenue.

**Punjab.**—The Punjab Chief Court in *Sad Kaur v. Buta Singh*, 25 I. C. 565, declined to interfere in revision with an order rejecting a plaint on the ground that an appeal from the order was competent.

**Oudh.**—In *Gumari v. Banwari*, 54 I. C. 733, the question was whether an appeal lies against the order of the lower court dismissing an appeal for failure of the appellant to pay the court-fee due on the memorandum of appeal. It was observed :

"Nearly all the High Courts have, however, drawn a distinction between a case where the valuation depends merely on a question of fact and one where it depends on a question of law declaring that s. 12 does not bar an appeal in the latter case. See *Studd v. Mati Mahto*, 28 C. 334; *Balkaran Rai v. Gobind Nath Tiwari*, 12 A. 129; and *Dada v. Nagesh*, 23 B. 485. Although it appears that the words in the section "Every question relating to valuation for the purpose of determining the amount of any fee" are so wide as to include question both of law and fact, it does not appear desirable to depart from a view so established and general."

**Patna.**—It was held in *Chandramoni Koer v. Basdeo Narain Singh*, 4 Pat. L. J. 57, that "under s. 540 of the Code of 1882, even as under s. 96, clause 1 of the Code of 1908, orders rejecting a plaint were and are appealable as decrees *save where otherwise expressly provided in the Civil Procedure Codes themselves, or by any other law for the time being in force*. There was under the old Code, and there is under the new Code no such express saving provision and the question therefore resolves itself under either Code, into a question as to whether appeals from such orders are barred by s. 12, clause 1 of the Court-Fees Act. It may be taken as having been conceded that *the right of appeal from an order rejecting a plaint under O. VII, r. 11 clause (b) or (c) is the touchstone whereby*

The one issue of outstanding interest was inevitably the Locarno Pact, and it soon became evident that the Imperial Government would ask utterly in vain for any aid from the Dominions on this score, even though it has been made possible for the Dominion Governments as opposed to the Parliaments to express acceptance of obligations. Even Australia and New Zealand declined to commit themselves, though high hopes had been placed on vague assertions of Mr. Coates and Mr. Bruce. Finally, the Dominions concurred in expressing the highest sense of the excellence of British policy, but utterly declined to show the reality of this sense by accepting a scintilla of obligation. It was doubtless wise of the Imperial Government to make the best of a bad business, but the fact remains that the United Kingdom is bound by treaty to take part in certain eventualities in a world war of the gravest character, with the certainty that the Dominions are morally and internationally absolutely free to decline to send a single man or ship or to contribute any form of aid. The position of the Dominions is also not easy; they will be at war, if Great Britain is at war,<sup>1</sup> for the idea that under the treaty they are either bound to or can assert neutrality has no sanction in the terms of the treaty or from the general principles of international law.<sup>2</sup> On the other hand, they cannot claim to exercise any decisive influence on the attitude of Great Britain in such a war crisis, for they are not partners in the treaty. Doubtless on the whole the Imperial Government must be admitted to have been justified in its action in securing the pact, having regard to the needs of European peace, but it remains unfortunate that the Dominions could not be induced either to share in making or in ratifying the pact. It is easy to understand the conditions of local feeling, which rendered it impossible for any Canadian Prime Minister after Mr. Meighen's Hamilton speech in 1925 to risk accepting any external obligation, and which negatived the participation of the Irish Free State or the Union of South Africa. Mr. Mackenzie King is unquestionably right in announcing the impossibility, as matters

<sup>1</sup> Cf. Downie Stewart, *New Zealand Deb.*, 1919, pp. 511 f.; Massey, *ibid.*, pp. 518 f.; Egerton, *Brit. Col. Policy in the XXth Century*, pp. 160 ff.

<sup>2</sup> Mr. Bruce asserted this frankly on 3 Aug. 1926, Mr. T. Roos on 23 May 1927; and Mr. Fitzgerald on 3 June and 16 Dec. 1926 in the Dáil could only hope that neutrality might become possible.

the order is revisable in all cases where the order is against the petitioner. Again in the same court, there is a marked difference of opinion as will be exemplified by a scrutiny of the decisions especially of the High Court of Madras.

**Bombay.**—The Bombay High Court takes the view that the order is revisable. A decision by a sub-court on a question of valuation determining the amount of court-fee, is notwithstanding its declared finality subject to revision by the High Court under s. 622, C. P. C. XIV of 1882, *Vithal Krishna v. Balkrishna Janandhen*, 10 B. 610.

**Calcutta.**—It has been held by the Calcutta High Court that the order is revisable if not under s. 115 of the code, at least under s. 15 of the Charter Act. *Sundara Mal v. Jessie Caroline Murray*, 16 C. L. J. 375, "It has been argued on behalf of the plaintiff that the rule should be discharged, first, because the decision of the subordinate judge is final under s. 12 of the Court-Fees Act; and secondly, because if the order is not final, this court has no jurisdiction to interfere with it in the exercise of its revisional jurisdiction. In so far as the first ground is concerned it is clear that s. 12 has no application to this case. It has been repeatedly ruled that s. 12 has no application where the question for decision is as to the class under which a suit falls and not merely of valuation in that class. It is sufficient to refer in support of this view to the decisions of this Court in the cases of *Ajoodhya v. Gunga*, 6 Cal. 249, *Omrao Mirza v. Mary Jones*, 12 C.L.R. 148, *Upadhya v. Pershidh*, 23 Cal. 723, *Peary Shah v. Surajmal Marwari*, 16 C.L.J. 371 and *Studd v. Mati Mohto*, 28 Cal. 343. Section 12 is, therefore, no bar to the exercise of the jurisdiction of this court. In so far as the second ground is concerned, it has been contended that even if the decision of the subordinate judge is erroneous that is no reason why this court should interfere. It has been conceded, however, that the court has previously interfered with erroneous decisions of subordinate courts in this class of cases: *Vithal Krishna v. Balkrishna*, 10 Bom. 610. *Sree Nath v. The Secretary of State*, (1909) N.L.R. 11; *Krishna Das v. Hari Charan*, 14 C. L. J. 47; *Ranrup v. Shiya Ram*, 14 C. W. N. 932. But it is needless to examine the scope of our revisional jurisdiction or discuss the effects of the decisions mentioned at the bar. *Amir Hussain v. Sheo Vaksh*, (1884) L. R. 11; *Kritamma v. Chapa*; *Bhagwan Ramanuja v. Khethar Moni*, 1 C. W. N. 617; *Mathura Nath v. Umes Chandra*, 1 C.W.N. 626; *Raghunath v. Chatraput*, 1 C.W.N. 633; because, even if it be conceded that this court cannot interfere in the exercise of its revisional jurisdiction it is plainly competent to us to revise the proceedings of the court below under s. 15 of the Charter Act.

But in *Govindu Das v. Nitya Kali Dasi*, 51 I. C. (Cal.) 81, it was held that 'an order under s. 149 C. P. C. requiring the plaintiff to pay additional court-fee is not open to revision under s. 115 C. P. C.

normally be rearrested, if he claimed release, under a fresh requisition for extradition addressed to the United Kingdom. Canada has also on her statute book an Act passed in 1889 for extradition without treaty, though it is not used, the need for it passing away when in 1890 a new treaty with the United States became operative. The system was recommended for adoption in England in 1878, but has never been accepted. It was the rule in Upper Canada before the Act of 1842.<sup>1</sup> The *Immigration Act* of the Dominion has been used with excellent effect, as in 1913<sup>2</sup> in the case of the escape from an asylum of Harry Thaw to secure the removal from Canada by the direct action of the Minister of that criminal lunatic, preventing the success of efforts to repeat in Canada the interminable legal processes which had taken place in America.

The Governor of a British possession is made by the treaties the proper person to whom application is addressed for extradition, but he is given the right in each case to refer the matter to the Imperial Government, and the right is clearly in force even in the Dominions,<sup>3</sup> though it would as a matter of course be exercised on ministerial advice. It may, however, be possible that in such a case there might arise an issue of Imperial policy.

### § 11. *Treaties as affecting Federations*

Certain questions are raised by the fact that in federations the central Legislature has usually only restricted power, rendering it uncertain what treaties can effectively be carried out through its action, and what need the action of the local Legislatures. In the case of Canada the matter is made fairly clear by s. 132 of the *British North America Act*, 1867, which confers on the Dominion Parliament and Government all necessary power to implement obligations of Canada, or any province, under Imperial treaties.<sup>4</sup> It is clear, therefore, that if adherence is desired

<sup>1</sup> See 3 Will. IV, c. 6. Cf. *Rev. Stat.*, 1906, c. 155, Part II.

<sup>2</sup> *Canadian Annual Review*, 1913, pp. 239-41; *Commons Deb.*, 4 March 1914.

<sup>3</sup> Even when, as in Canada, the Act is suspended. For the special Extradition Treaty with the United States in respect of Canada of 8 Jan. 1925, see *Parl. Pap. Cmd.* 2513; cf. the Smuggling and Narcotics Treaty of 6 June 1924 and the Act to enforce it, 27 July 1925; *Canadian Annual Review*, 1924-5, pp. 88 f.; 1925-6, pp. 79 ff.

<sup>4</sup> This rule applies, of course, to all treaties now made by Canada. See for an important instance the Act 11 & 12 Geo. V, c. 46, to authorize ratification

**Madras.**

**No revision lies.**—In *Kotilinga Mudaliar v. Board of Commissioners for Hindu Religious Endowments, Madras*, 1927 Mad. 1021 (2) it was held by a single judge that no revision lay. "It is indisputable that the court had jurisdiction to assess the court-fee under s. 12, Court-fees Act, and it involved a confusion of thought to say that because the order which the court had jurisdiction to pass *resulted* (perhaps the word '*resulted*' is a mistake for '*might result*') in the rejection of the application, therefore assuming that the order was wrong, it was passed without jurisdiction. \* \* S. 115 requires that the order which it is sought to revise amounts to deciding a "case". Now if the "case" comprises no more than a direction to pay the court-fee within a certain time, it is impossible without anticipating what has not yet occurred, to say that the court has refused to exercise its jurisdiction to entertain the petition."

A similar view was taken in *Chinnaswami Pillai v. Pavayee Ammal*, 1927 Mad. 1162. The view is set out in the following extract. "A preliminary objection is taken that the High Court should not interfere under s. 115 of the Civil Procedure Code in a case of this kind. That was the view taken by Phillips, J., in *Acha v. Sankaran*, 1926 Mad. 768. No doubt, other judges of the Court have taken a different view, but with all respect, I prefer to follow Phillips, J. Petitioner has other remedies open to him and it is, I think, no answer to say that the appropriate remedy is more cumbrous than that he seeks to obtain by way of revision. Assuming that I can interfere in such a matter in revision, I am unable to see how any question of a jurisdiction arises. The lower court may be wrong, but it had jurisdiction to pass the order it did."

**A modification of the view.**—In *Mahomed Illiyas v. Mt. Rahima Bee*, 56 M.L.J. 302=1929 Mad. 191, it was held that although Civil Revision Petition lies when the decision of the lower court with regard to court-fee payable is unfavourable to the plaintiff, it does not lie when such decision is in plaintiff's favour as such decision, though to the detriment of the revenue, is not against the defendant; and as the mistake can be corrected by the appellate court under s. 12 of the Court-Fees Act. "As a matter of fact, in the case of various kinds of interlocutory orders, the High Court exercises its powers of revision. Where in regard to the court-fee payable the decision of the lower court is unfavourable to the plaintiff, it has been held that the High Court can in revision interfere with that decision. This is the view taken in *Karuppanna Thevar v. Angammal*, 1926 Mad. 678, and in *Venkataramayyar v. Narayanaswami Ayyar*, 1925 Mad. 713. *Kumaraswami Sastri* and *Wallace, JJ.*, adopted the same view in *Kulandai Pandichi v. Ramaswami Pandia*, 1928 Mad. 416=51 M. 664, where the learned judges review the authorities on the point. In the present case, the question arose in a different way. The decision is not against the plaintiff, but it does

Other instances of refusal of the Dominion to act have been seen in the inability of Canada to adhere until 1921 to the Anglo-American Convention of 1899 regarding disposal of real and personal property, or to accept the convention regarding the prohibition of night work of women, and the convention with France regarding automobiles.

The case of such Dominions as Canada and Australia is provided for in the Labour clauses of the Treaty of Peace, which allow the Dominions in such cases to treat a draft convention merely as a recommendation. In point of fact, Canada, despite her activity on the Labour Organization, where she has a governmental seat as one of the chief industrial powers, has not been able to ratify more than a single Convention, that relating to employment of children under fourteen on board ships. In all other cases, including the famous Eight Hours Day Convention of 1920, her only possible action has been to ask the Provinces to consider legislation,<sup>1</sup> and their response has been insufficiently uniform to allow of much action.

In the case of the Commonwealth the position is even less favourable to the central Parliament and Government; for, while Canada has the wide power of s. 132 though reluctant to use it, the Commonwealth has only the most vague power under s. 51 (xxix) to deal with external affairs, treaties included in the drafts of 1891 and 1897 having disappeared in the final form.<sup>2</sup> Mr. Deakin in 1902 argued that the omission had no effect, but it seems most doubtful whether this can be ruled to be correct, and the High Court has not yet so held. The result is rather chaotic; the Commonwealth, it seems clear, can ask for adherence to be notified in respect of any treaty regarding a matter in which she possesses paramount power to legislate. If she does so, she will, under the rule of the Constitution against preference for any State, act in respect of the whole area. On the other hand, if she has no legislative power, she should only propose to adhere in respect of any State which desires that adherence should be notified, and it must depend on the subject matter whether the adherence can be given unless all the States

<sup>1</sup> *In re Legislative Jurisdiction over Hours of Labour Reference*, [1925] S. C. R. 505.

<sup>2</sup> Cf. Quick and Garran, *Const. of Commonwealth*, pp. 622 ff.; Harrison Moore, *Comm. of Australia* (ed. 2), pp. 461 f.

guishable from 56 M. L. J. 302, but it was held that that fact did not alter the position and that the High Court would not interfere in revision, the order sought to be revised being in favour of the plaintiff. It was also doubted whether the Government not being a party to the suit in which the order was made could prefer a revision to the court but the point was left open. One would have thought that the reason for entertaining a revision preferred by the plaintiff, *viz.*, that he is an aggrieved party, (while a defendant never is) would equally apply in the case of a revision preferred by the Government who is necessarily aggrieved by any order made by the lower court to the detriment of revenue. Indeed the Government appears to have a better claim than even the plaintiff for revision, as another remedy is open to him, *viz.*, a right of appeal from the final decree in the suit, which remedy is not open to the Government. As regards the point raised, whether the Government is a party to the suit, it has to be observed that even supposing that the Government is not a party, it is Submitted, it is open to the Government to invoke the High Court for the exercise of its revisional jurisdiction under s. 115 C.P.C., as the High Court can *suo moto* call for records from the lower courts under that section. Though as a matter of practice this revisional jurisdiction is exercised only on the application of parties the jurisdiction itself is not confined to such cases. *Muthu Chettiar v. Narayanan*, 51 Mad. 672 (676).

Again in *Rani Kulandai Pandichi v. Indran Ramaswami*, 51 Mad. 664=55 M. L. J. 345=1928 Mad. 416=27 L. W. 286, it was held that a revision under s. 115 of the Civil Procedure Code lies to the High Court against an erroneous order of trial court demanding a heavier court-fee than was properly due on a plaint filed in that court. This revision petition arose out of an order of the Subordinate Judge calling upon the plaintiffs to amend the valuation in the plaint and to pay additional court-fees. A preliminary objection has been taken as to the maintainability of the civil revision petition on the ground that an appeal would lie against an order dismissing the suit if the court-fee was not paid. Their Lordships observed as follows: "We are unable to uphold this contention. We think that where a Judge on an erroneous view of the court-fee payable refuses to proceed with the suit until the proper court-fee is paid he fails to exercise jurisdiction as the party is entitled to have his case tried if he paid the court-fee. In *Sudalai Muthu Pillai v. Sudalai Muthu Pillai*, 17 L. W. 623=1923 Mad. 270, Oldfield, J., held that in such cases the provisions of s. 115 of the Civil Procedure Code have been complied with. As regards the contention that a conditional order the non-compliance of which would entail the dismissal of the suit is not revisable under s. 115 the learned judge observes: 'Generally it is impossible to hold that an order directing the dismissal of an appeal in case the payment is not made, is not a refusal to exercise jurisdiction in that appeal.' In *Dodda Sannekappa v. Sakravva*, 36 I. C. 831, it was held by Srinivasa Aiyangar, J., that in a suit for a declaration that certain transactions were not binding on the plain-



brief period of 1924 when Labour was in office,<sup>1</sup> has agreed to do is to present for Parliamentary sanction in any appropriate form any treaty of importance, reserving the right to make and ratify minor treaties which involve no change in the law of the land without such approval. The British practice, therefore, recognizes that the approval of Parliament must be sought for any important convention and also for any convention altering the law of the land, before ratification is expressed; still more, of course, when these two conditions combine. It is further necessary, when it is provided in the treaties themselves that approval by Parliament is required prior to ratification, as was done in the Heligoland Treaty of 1890 and the Anglo-French Convention of 1904, both of which might well have been held not to require legislation. Of Acts required to render certain changes of the law before a convention is ratified, excellent examples exist in the *Copyright Acts* of 1886 and 1911, passed to enable adherence to the Berne and Berlin Copyright Conventions. The Imperial Government also promised to give Parliament an opportunity of discussion of the Declaration of London before it was ratified, but the matter incidentally was defeated by the refusal of the House of Lords to pass the Naval Prize Bill of 1911, without which the Declaration could serve no useful purpose. It was made clear then that there were grave objections to such alterations in prize law as were involved in the Convention being made by Executive authority alone. The War brought home forcibly to successive Governments the propriety of securing Parliamentary assent before ratification of every treaty of importance, and this salutary rule ensured the impossibility of the misguided conventions of 1924 with Russia ever becoming law.

In the case of the Dominions submission to the Legislature is even more binding than in the United Kingdom. Both the Reciprocity and Fishery Treaties of 1854 and 1871 with the United States were made dependent for their operation on legislation, and the Treaty of 1888, which remained abortive, expressly provided in Article XVI for ratification by the Queen after receiving the assent of the Legislatures of Canada and

<sup>1</sup> Treaties were then presented to Parliament before and again after ratification.

non-payment. The other Madras decisions above referred to were not brought to the notice of the learned Judge and he preferred to follow the decision of the Patna High Court in *Mussammatt Lachmi-pathumari v. Nand Kumar Singh*, 5 Pat. L. J. 400, which view Krishnan, J., was not inclined to follow and the decision of the Calcutta High Court in *Gobindu Das Nath v. Mitya Kalidasi*, 51 I. C. 581. In *Chinnaswami v. Pavayee*, 1927 Mad. 1162, Waller, J., followed the decision of Phillips, J., in *Acha v. Sankaran*, 23 L. W. 752, and observed that although other Judges of this Court have taken a different view he prefers to follow the view of Phillips, J., on the ground that the petitioner has other remedies open to him and that it is no answer to say that the appropriate remedy was more cumbrous. It seems to us that while courts would not generally interfere in revision where an equally efficacious remedy is open to the party, they have in several cases interfered where the remedy by way of appeal would entail unnecessary hardship on the party, involve multiplicity of proceedings or would not give the party as complete and efficacious a relief as interference with an interlocutory order and the case satisfied the requirements of s. 115 of the Civil Procedure Code \* \* It is difficult to see why if the case is one of declining to exercise jurisdiction and the requirements of s. 115 are otherwise satisfied the High Court should decline to interfere when by timely interference it will save a great deal of unnecessary hardship; we think the mere fact that an appeal would lie later on the consequential orders passed by the Subordinate Judge if the stamp is not paid, is no ground for refusing to entertain the petition to revise the order demanding an erroneous court-fee and declining to proceed with the suit unless the sum erroneously demanded is paid."

**Nagpur.**—A similar view is taken in Nagpur. See *Harihar Rao v. Satu Bai*, 1927 Nag. 256. "Revision will lie against an order demanding additional court-fees." Again at p. 258. "Instead of asking for an extension of time for the payment of the court-fee demanded, during which he could get the correctness of the demand tested by an application for revision, the plaintiff has followed the usual course of refusing to pay, allowing his plaint to be rejected and appealing against the order of rejection. That would be unwise even if it appears fairly certain that the demand for extra court-fee is wrong as the finding that it is not, means that the rejection of the plaint was right and indeed inevitable. It has recently been held in the Allahabad High Court that a demand for further court fees is not within the terms of s. 115, C. P. C. The contrary view has however been held in this court for many years and applications for revision of such orders have always been accepted as a matter of course."

**Patna.**—The gist of the law on the subject is admirably summed up in *Mani Lal v. Durga Prasad*, 3 Pat. 930. Their Lordships observed as follows:—"Ordinarily an interlocutory order is not capable of revision, particularly when there is another remedy available to the injured party; but where the order complained against is such as is

not rigidly accepted in the Dominions any more than it is in the United Kingdom. On 21 June 1926 it was unanimously held to be necessary by the Canadian House of Commons as regards treaties imposing obligations to take military or economic sanctions, such as the Locarno Treaties.

One result of the submission of treaties to Parliament is inevitable, as in the case of the United States reference to the Senate. It is always possible that Parliament may desire to amend, and that even the device by which a Speaker may seek to refuse to allow the treaty itself to be altered may be defeated by the sort of Lower House which does not allow its officers to dictate its conduct. Mr. MacDonald's frank admission that he would not rule out attempts to amend the Anglo-Russian Treaty of 1924 in the Commons was disapproved by the Attorney-General of New Zealand as an inroad on Executive power. But this is clearly rather unwise, and needlessly old-fashioned. It is clear that it will increase the difficulties of treaty negotiation, if the Legislature insists on intervention; but the Senate of the United States has won a good deal for the United States by its intervention, and in the long run it is ridiculous to insist that a Parliament shall acquiesce in the supposed perfection of the work of the Executive. In a suitable case it can change the treaty and bid the Executive seek the approval of the other party to the new form.

### § 13. *Dominion Ministries of External Affairs*

The effort to keep in touch with the Imperial Government as to foreign affairs has led in the Dominions to the concentration of these communications in the offices of the Prime Ministers, or a Minister of External Affairs, as in the Irish Free State or New Zealand, who have one by one started improved organization to deal with such questions, the stream of correspondence having reached in 1925, according to Mr. Amery, some 600 dispatches and 200 telegrams, whose fate, it may be feared, is chiefly filing.<sup>1</sup> The decision of Mr. Bruce to maintain in

<sup>1</sup> The portfolio of external affairs became Prime Ministerial in Australia in Dec. 1921, following the Canadian model; Mr. Mackenzie King in both his ministries (1921 and 1926) took the post. The Prime Minister in South Africa deals with all these matters. The Minister for External Affairs of the Free State took part in the Imperial Conference of 1926.

of *Chandramani Koer Basdeo v. Narayan Singh*, 4 P. L. J. 57 and would seem to have been now generally accepted.

The question whether an order directing additional court-fee to be paid satisfies the aforesaid tests depends upon the circumstances of each case. If it is an order merely assessing the valuation of the property and the only question involved is as to the amount upon which the court-fee has to be paid, the decision of the court of first instance would appear to be final under s. 12 of the Court-Fees Act. That section has been enacted in the interest of revenue and is final so far as that court is concerned. There will be no appeal or revision from that order. But the question may, under certain circumstances, be raised in an appeal from the final decree made in the suit. \* \* And where it involves the jurisdiction of the court to try the suit the decision involves a question of jurisdiction and a wrong decision on the point would amount to an assumption of jurisdiction not vested in it by law, or a failure to exercise jurisdiction vested in it by law. \* \* Therefore it is wrong to say that the plaintiff ought to have waited till his plaint is dismissed and then pay another court-fee for lodging an appeal against the final decree and thus ultimately get a redress which in many instances may not be sufficient. \* \* Thus an order demanding an improper court-fee involving the jurisdiction of the court to try or not to try suit, though an interlocutory order, fulfils the tests referred to above and will attract the revisional jurisdiction of the court under s. 115 of the Civil Procedure Code and s. 107 of the Government of India Act. \* \* As to whether interlocutory orders in such matters decide a case under s. 115 of the Code, their Lordships in that very case point out that the word "case" is not defined and in their opinion it cannot be confined to a litigation in which there is a plaintiff, who seeks for a relief or damages or otherwise, against a defendant who is before the court. Therefore the decision of matter relating to court-fees will be decision of a "case" within the meaning of the word in s. 115 of the Code. \* \* If on account of its wrong decision the court refuses to exercise a jurisdiction vested in it by law, the revisional jurisdiction of the High Court will come in."

Again in *Musst. Lachmipathi Kumari v. Nand Kumar Singh*, 5 Pat L. J. 400, their Lordships observed as follows:—"The High Court will not interfere in revision with an interlocutory order where there is another course open to the applicant and no irremediable harm can be suffered by the interlocutory order."

An exactly similar case arose in *Lala Bhuvansari v. Mohan Lal*, see footnote in 5 Pat. L. J. 400. It approved the decision in *Chundraman v. Basdeo Narain*, 4 P. L. J. 57, where the learned judges remarked that "although in *Banki Behari v. Ram Bahadur*, 4 P. L. J. 191, a divisional bench of this court has interfered with an interlocutory order of this description, generally this court follows the *cursus curiae* of the Calcutta High Court and the course has

## VI

### TRADE RELATIONS AND CURRENCY

#### § 1. *Trade Relations*

LORD DURHAM<sup>1</sup> and his school of thought assumed that control of tariff and customs arrangements would remain with the Imperial Government, and when they worked for Canadian reform, though by the Declaratory Act of 1778 the principle had been for good laid down that taxation would only be imposed on Canada for trade purposes on the footing that the net proceeds went to Canada herself, they contemplated the maintenance of the system by which Imperial Acts fixed the Canadian tariff, and the navigation laws strictly limited the shipping communications of the Dominion. There was, of course, no doubt as to the colonial power to legislate as to customs duties, and double imposts might cause confusion,<sup>2</sup> but the Imperial Acts were paramount and could not, without express authority, be varied, save by adding new duties. The coming of free trade in the United Kingdom rendered it impossible to maintain unchanged the old tariffs, while on the other hand it might be impossible for the Colonies to dispense with the revenues derived from that source. An Act of 1846<sup>3</sup> accordingly authorized the Colonial Legislatures to repeal or reduce duties imposed by Imperial legislation on foreign goods imported into the Colonies. Control of customs legislation generally was accorded in 1857.<sup>4</sup> The new régime of free trade brought with it the utter unfairness of maintaining the preference for British shipping under the Navigation Acts. The Canadian Legislature addressed the Imperial Government on this subject, and in 1849<sup>5</sup> the protest was recognized to be just, the navigation laws disappeared; and the St. Lawrence was thrown open to foreign vessels. In April 1851 Canada received control over her post office, a matter of great importance

<sup>1</sup> *Report*, ii. 282; Wakefield, *Art of Colonization*, p. 312, who added the post office.

<sup>2</sup> See 5 & 6 Vict. c. 49.

<sup>3</sup> 9 & 10 Vict. c. 94; 8 & 9 Vict. c. 93; Adderley, *Colonial Policy*, p. 28.

<sup>4</sup> 20 & 21 Vict. c. 62; 36 & 37 Vict. c. 36, ss. 149-51. Executive control passed in 1851-5.

<sup>5</sup> 12 & 13 Vict. c. 66.

of the Civil Procedure Code of 1908 the court has inherent power to make such orders as may be necessary for the ends of justice in order to prevent the abuse of the process of the court, and under s. 152, the court has the right to correct arithmetical mistakes in orders generally or errors arising therein from any accidental omission." *Chandramani Kocr v. Basdeo Narain Singh*, 4 P. L. J. 57. An application for review had however been filed in this case, and on that ground it was distinguished and not followed in *Harihar Prasad v. Maheswari Prasad*, 3 Pat. 654, where it was held that the decision as to sufficiency of the court-fee was a judgment and could not be altered save as provided in order XX, rule 3 C. P. C. See also *Mst. Debi v. Secretary of State for India in Council*, 1935 A. L. J. 376=1935 All. 455, where review of a previous order demanding additional court-fee was allowed and refund of court-fee collected in excess was granted.

A recent decision of Justice Venkatasubba Rao in *Lakshmana Aiyar v. Palaniappa Chettiar*, 69 M. L. J. 479, deals with the question of the power of court to review its own order regarding the adequacy of court-fees in any particular suit. In the suit which gave rise to this Civil Revision Petition, there was an office note regarding the question of court fee payable on the plaint and a decision of the Subordinate Judge holding that the fee paid was adequate. Later on, there were certain Interlocutory Applications and while resisting them, the defence raised the objection that the suit itself was not maintainable as proper court-fee was not paid. The judge then referred to his previous order and upheld it. Thereafter, issues were framed and one of the issues related to the question of the sufficiency of court-fee. Again, it was held by the District Court to which the suit was transferred that it had no jurisdiction to reconsider the adequacy of court-fee paid. The touring Court-Fee Examiner having examined the pleadings later, put up a note that the proper court-fee was not paid and the presiding Judge upheld the contention of the Court-Fee Examiner and directed the party to make good the deficit court-fee. The aggrieved party, the plaintiff, moved the High Court in Revision. On the facts of this case, there is absolutely no doubt that the decision regarding court-fee must be taken to be final under the provisions of Clause (1) of Section 12, Court-Fees Act. There are however certain observations in the judgment which though perhaps *obiter* may have a far reaching effect. His Lordship observes: "I have said that three previous orders had already been made upholding the plaintiff's contention as regards the proper court-fee payable. In strict law, even if the matter had not gone beyond the stage of the first order, the lower court's power to revise the valuation would have come to an end." This means that where the court has passed an order to the effect that the court-fee paid is correct, there will be no question of a further reconsideration at the instance of anybody, whether it be the party or the Government or even the court itself. His Lordship further states thus, "There is nothing in the Court-Fees Act

tariff of Canada was received. The Sheffield Chamber of Commerce remonstrated, the Secretary of State backed their complaint, though taking care to admit that the Act would not be disallowed. It was, it is clear, perfectly honestly held in England that Canada was imposing a grave burden on her consumers for no just cause, and was ignoring all the benefits of free trade. Mr. A. Galt, not unnaturally, took the occasion to read the Imperial Government a solemn lesson on the impropriety of the mere idea that the Act might be disallowed.

Self-government would be utterly annihilated if the views of the Imperial Government were to be preferred to those of the people of Canada. It is, therefore, the duty of the present Government distinctly to affirm the right of the Canadian Legislature to adjust the taxation of the people in the way they deem best, even if it should unfortunately happen to meet the disapproval of the Imperial Ministry. Her Majesty cannot be advised to disallow such Acts, unless her advisers are prepared to assume the administration of the affairs of the Colony irrespective of the views of its inhabitants.

The Imperial Government replied by pointing out that industries fostered under tariffs were apt never to become self-supporting, a view Mr. Galt did not accept, though experience in Canada was to confirm its accuracy. Yet it was 1879<sup>1</sup> before a protective tariff of a really effective type was passed in the Dominion.

In Australia, Lord Grey<sup>2</sup> would have liked to enact a tariff union in 1850, and on 31 October 1851 he urgently recommended to the Colonies the beauties of free trade, his doctrine being that the Imperial Government was under a duty to impose, if at all practicable, this admirable system on the Colonies. No great heed was paid to his advice, but the Imperial Government on the score of it was believed to have looked with undue favour on the action of the Victorian Upper House in 1868-6 in seeking to prevent the tacking of a Tariff Bill of a protective character on to the Appropriation Bill. In 1867, however, legislation as to the duties on goods in transit on the river Murray between New South Wales and Victoria helped to promote local interest in intercolonial free trade, and in January 1868<sup>3</sup> the Imperial Government professed its readiness to con-

<sup>1</sup> For its causes, see Skelton, *Sir Wilfrid Laurier*, i. 205 ff.

<sup>2</sup> *Parl. Pap.*, 1 July 1852, p. 67; *Hansard*, ser. 3, ccxv. 2000 ff.

<sup>3</sup> *Parl. Pap.*, C. 576, p. 1.

the instance of any one afterwards, there seems to be no purpose served by the Court-Fee Examiners examining all pending suits and bringing to the notice of the presiding Judge cases where the court-fees paid are deficient. It is this result which has been averted by the intervention of legislature in Bengal where the Court-Fees Act has been recently amended in 1935 which has cleared the ground at least in some obscure portions of the Act. Section 8B of the Bengal amendment provides that "in every suit or appeal the Court shall, after the registration of the plaint or memorandum of appeal and in every case before proceeding to deliver judgment record a finding whether a sufficient court-fee has been paid." If we pause and enquire as to how this provision about the determination of the sufficiency of court-fee is to be after the registration of the plaint, it will be seen that a rough and ready or tentative determination of the court-fee is made at the outset, of course *ex parte* and later on there is a finding recorded obviously in the presence of parties. From this it appears that the court decides tentatively as to what court-fee is payable and when such payment is made, the plaint or appeal is registered and afterwards the question of the adequacy of court-fee is considered and a definite finding recorded on the question. It is this finding that constitutes the decision under clause (1) of section 12.

**Original side of the High Court**—Section 12 does not apply to the Original Side of the High Court and the first clause of s. 12 does not apply to the High Court at all.

**Estoppel.**—Where on an objection being taken as to the insufficiency of court-fee on a memorandum of appeal it appeared that the court-fee was exactly the same as that on the plaint, and that the trial judge had on an objection by the defendant framed an issue on the point and decided it in favour of the plaintiff and the defendant had accepted the decision and stamped his own appeal in the appellate court accordingly, it was held that under the circumstances the objection could not be entertained. *Chhunu Lal v. Bank of Upper India (Punjab)*, 40 I. C. 904.

**Insufficiently stamped document.**—In *Mt. Jantan v. Ahmed*, 1928 Lah. 221 at p. 223 it was observed as follows:

"The contention of the learned counsel was that the plaint being insufficiently stamped the decree passed thereon was void, and consequently no appeal lay at the instance of the plaintiff. I confess, I am unable to follow that argument. O 7, r. 11, C. P. C. clearly provides that if the plaint is written upon paper insufficiently stamped, and the plaintiff on being required by the court to supply the requisite stamp paper within the fixed time, fails to do so, then the court shall reject the plaint. This provision of the law read with s. 28 of Court-Fees Act clearly implies that opportunity has to be given to the party concerned to pay the proper stamp, and it is on his failure to do so that the court is entitled to decline to look at the document. But I am unable to se



replied on 19 April 1872<sup>1</sup> in a long and rather unconvincing dispatch in which he sought to persuade the Colonies of the benefits of free trade and of the estranging power of differential and protective duties, while he eulogized customs unions as making for harmony within and preventing difficulties arising as to differential duties. Incidentally, he pointed out that the attempt to criticize the action of the Imperial Government in concluding the agreement of 1865 with the Zollverein was inconsistent with the right of that Government in respect of treaties, since the Constitution Acts of the Colonies all forbade imposing duties contrary to treaty. He failed, however, fully to appreciate and still more to answer the contention of the Colonies that it was improper by entering into treaties to fetter the action of the Colonies as to giving one another preferential treatment. The result of the dispatch was a Conference of 1872, in which the request for freedom to make differential tariffs for foreign powers was dropped, though New Zealand was anxious to maintain it, and merely the right of making preferential Australian agreements was asked for. This was conceded in an Imperial Act of 1873, which, however, still provided against differential tariffs for foreign countries, or other, not Australasian, parts of the Empire. It was, of course, possible under the new arrangement for the United Kingdom to be treated in one of the colonies concerned more unfavourably than another colony, but little at the time came of the concession, for the Colonies turned out not to be able to arrange any satisfactory use of the new power they had desired. In 1894, at the Ottawa Conference, the issue of preference within the Empire was raised and pronounced for. It was supplemented by the demand for the removal of all hindrances whether legislative or treaty which might prevent the Colonies from arriving at intercolonial preference agreements or agreements with the United Kingdom. The first of these requests was accomplished by the repeal<sup>2</sup> of the proviso to the Act of 1873 which still refused power to make differential tariffs save as regards the Australasian colonies, while as regards the rest of the Empire the Imperial Government intimated that Bills to effect such tariffs would not necessarily be disallowed, but must be reserved, a condition applied also to Australasian

<sup>1</sup> *Parl. Pap.*, C. 576, pp. 6 ff.

<sup>2</sup> 58 & 59 Vict. c. 3.

The appellate court can take up the question *suo motu* and determine whether the court-fee has been properly collected in the lower courts.

Even where an appellant is not appealing from that part of the decree of the lower appellate court which allowed his cross objection, for which he did not pay the proper court-fee, the appellate court has inherent jurisdiction not to entertain the appeal before the deficit is made good as it is a default arising out of the same suit. The Act gives discretionary power to insist upon the appellant to pay the proper court-fees throughout the litigation as a condition precedent to allowing him to come before it in appeal. *Rasik Behari Prasad v. Hriday Narayan*, 1 Pat. 471 = 1922 Pat. 284.

Once the court disposes of the appeal, it becomes *functus officio* and could not call upon any party to make good any deficiency in court-fees. *Abdulla v. Secy. of State*, 1925 Lah. 131.

As a general rule it is desirable that where an appellate court has to deal with the question of recovering a deficit court-fee payable by the appellant in the lower court or courts, the matter should be dealt with at the earliest possible moment after the deficit is discovered. *Hitendra Singh v. Rameswar Singh*, 1921 Pat. 88.

## 2. The points to be considered are these:

(a) The provisions of a fiscal statute should be so construed as not to furnish a chance of escape and a means of evasion of the payment of fee. *Raj Rajeswari Jin v. Gathi Krishna*, 1924 Cal. 953 = 82 I.C. 128.

(b) "The Court-Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. This is evident from the character of the Act and is brought out by s. 12, which makes the decision of the first court as to value final as between the parties, and enables the court of appeal to correct any error as to this, only where the first court decided to the detriment of the revenue." Where the defendant seeks to utilise the provisions of the Act, not to safeguard the interests of the State but to obstruct the plaintiff and does not contend that the court wrongly decided to the detriment of the revenue, but that it dealt with the case without jurisdiction, such a plea which was advanced for the first time at the hearing of the appeal in the District Court, is misconceived and was rightly rejected by the High Court. *Kachappa v. Shiddappa*, 24 C. W. N. 33 = 43 B. 507 (P. C.).

(c) As observed by Wallace, J., in 40 M. L. J. 608, *In Re Lakshmi Ammal*. "The scheme of s. 12 of the Court-Fees Act is to see that the revenue is not defrauded, that the proper fee payable to the Government as the 'price' of the trial of the suit has been paid. It is difficult to see how a decision on that point can rest upon the option of parties, or to say that the Act deliberately restrains courts from interfering on behalf of the revenue unless the parties them-

The Commonwealth in 1906 arranged preference with the South African Customs Union, but its offer of a preference to British goods imported only in British ships manned with white labour came to grief on treaty obligations, and in 1908 a simple preference took its place. Efforts to carry the preference further by securing agreements with Canada or New Zealand failed at the time to come to anything.<sup>1</sup> The Imperial Conference of 1911 in addition saw the desire of preference on the part of the Dominions met by a negative on the part of the British Government; that Government, in lieu, pressed for the appointment of a Dominions Royal Commission, which investigated the possibility of promoting Dominion and British trade by methods other than tariffs. Its recommendations, arrived at during war conditions, came practically to nothing, but in June 1916 the Paris Resolutions<sup>2</sup> indicated a new spirit in the British Government towards the conception of preference, and in 1917 the Imperial War Conference<sup>3</sup> committed itself to the ideal of 'making the Empire independent of other countries in respect of food supplies, raw materials, and essential industries'. It recommended, therefore, the grant of specially favourable treatment to the products and manufactures of other parts of the Empire by each part of the Empire, and the stimulation of emigration from the United Kingdom to the Dominions. The resolution was approved in 1918,<sup>4</sup> and in 1919 it was carried into force in the United Kingdom, the form adopted being that of giving preference on a wide range of existing duties. The Imperial Economic Conference of 1923<sup>5</sup> reiterated the advantage of preference, and the British Government consented to accept the principle, proposing *inter alia* some small new duties in order to grant a more effective preference. But the proposal was not at once homologated, as Mr. Baldwin conceived the impression that the United Kingdom should adopt a protective system such as that prevailing in the Dominions, but the defeat of the Ministry at the general

<sup>1</sup> Commonwealth Deb., 1908-9, p. 837; *Canadian Annual Review*, 1910, p. 105; *Parl. Pap.*, Cd. 3524, pp. 419 ff.

<sup>2</sup> *Parl. Pap.*, Cd. 8271; see also Cd. 8482, 9035. Sir W. Laurier and General Botha disapproved (Skelton, ii. 464 f.).

<sup>3</sup> *Parl. Pap.*, Cd. 8566, p. 114.

<sup>4</sup> *Ibid.*, Cd. 9177.

<sup>5</sup> *Ibid.*, Cmd. 2009, 2115. See also Cmd. 2084.

decision thereon passed by the court of first instance before a court of appeal can interfere.

A plaint which was insufficiently stamped was filed in the City Civil Court, and was accepted without objection by the Sheristadar who is the chief ministerial officer of that court, entrusted with the duty of checking the pleadings filed in that court, and of seeing whether the proper court-fee had been paid thereon. The suit was dismissed by the City Civil Judge, and on appeal by the plaintiff, the Taxing Officer of the High Court demanded from the plaintiff the difference between the court-fee paid by her in the City Civil Court and the court-fee payable by her according to the law. The plaintiff contended that, as there was no decision by the City Civil Judge, under s. 12 of the Court-Fees Act as to the proper court-fee payable on the plaint, the Appellate Court had no power under s. 12 (2) of that Act to require her to pay additional court-fee. It was held overruling the contention, that the act of Sheristadar in accepting the plaint amounted to a decision by the City Civil Judge as to the court-fee payable on the plaint under s. 12 (1) of the Court-Fees Act, and that the Taxing Officer was therefore entitled under s. 12 (2) of that Act to insist upon the payment of the difference. The words "shall be decided by the court" in s. 12 (1) do not mean that an issue shall be raised and decided by the court. All that they mean is that the court either the presiding officer or the ministerial officer who is charged with that duty has to determine it. *In re Lashmi Ammal*, 49 M.L.J. 608=91 I.C. 729=1926 Mad. 96. At page 610, Wallace, J., observes: "So far as we are aware, this is the practice obtaining in all moffusil courts. Plaints and petitions are received by the chief ministerial officer who files them if he is satisfied that they are properly stamped. If he finds that they are not properly stamped, he draws the attention of the pleader concerned, to the fact and the deficiency is made up. If there is a difference of opinion between the chief ministerial officer and the pleader concerned, the matter is placed before the judge or the presiding officer of the court, who decides what the proper court-fee is. If objection is taken by the opposite side, as to the correctness of valuation, or court-fee, an issue is raised as regards that, and the court decides what the proper valuation is, and what court-fee should be paid. The wording of the section offers no difficulty, since in any case, the trying court must decide the question of court-fee impliedly, or explicitly, before it can proceed to try the suit. If the court is not satisfied that the plaint is properly stamped, it must dismiss the suit, unless the proper stamp fee is paid—See O. 7, r. 11 C. P. C. If the question is not explicitly raised and the court proceeds with the trial, the court has impliedly decided that the stamp is sufficient. If the parties or the taxing officer specifically raise the point then the court gives an explicit decision thereon. In either case there is a decision of the court." See also *Dyal Singh v. Ramrakha*, 15 I. C. 463 (Lah.) cited *infra*.

**Second appeals.**—Though s. 12 occurring as it does in a chapter headed "Fees in other courts and public offices" as contrasted with

be given to the United Kingdom, or of course the rest of the Empire. General Smuts moved an amendment to the effect that the Government should bring up 'amended preference and tariff proposals which will recognize the principle that in any tariff arrangements with foreign countries Great Britain will automatically enjoy a clear preference on any customs duties fixed under such arrangement'. The Minister for Defence, Mr. Creswell, Labour leader, objected to the doctrine that the United Kingdom should profit by the Colonies, which had led to the loss of the first Empire. The basis of trade preferences was a dangerous one as giving rise to complaints when, as in 1924, there was no action in the United Kingdom to carry out the proposals of 1923, and he censured General Smuts's querulousness on that occasion. But the matter was finally disposed of as a serious political issue by the concession by the Government that any reductions accorded to foreign Powers would automatically be extended to the United Kingdom. The pledge given on 4 May by the Minister of Finance was explicit: 'The Government has no intention of entering into, and will not seek, any trade agreement under which Great Britain will be placed in a less favourable position than the country with which the agreement is effected. In other words, we intend to give her most favoured nation treatment in all cases'. The essence of the proposals involved the removal of the old flat rate 3 per cent. British preference, its increase on certain items, but a general withdrawal on others, the calculation being that, as compared with £860,000 to the United Kingdom and £90,000 to the Dominions—Canada, Australia, and New Zealand—in 1924, the amounts would be £300,000 to the United Kingdom and £50,000 to the Dominions. The British preference of 1919 and 1925 has, of course, inevitably done comparatively little for the Union, and though it was really admitted that the Union owed the defence of her trade to the United Kingdom, it was argued that it was to the interests of the United Kingdom to secure free transit of goods meant for her. At the same time arrangements were made with Southern and Northern Rhodesia under which, while certain restrictions are imposed on the importation of Rhodesian beef and cattle, there is still in force the old system of no customs barriers, the share of Rhodesia in customs collected in the Union, in respect of goods which pass

is found in an appellate court that the court-fee paid on a plaint or a memorandum of appeal, as the case may be, in the court below is insufficient, and no dispute as to the amount has arisen and been specifically decided in such lower court with reference to s. 12 of the Court-Fees Act, it must be held if such lower court has proceeded to the decision of the suit or appeal, that such court had decided under s. 12 (i) of the Court-Fees Act upon the proper court-fee to be levied. Such being the case, provision of s. 12, paragraph (ii) of the Court-Fees Act would apply, and the consequence of the action taken by such superior court would be such as is provided for in s. 10 paragraph (ii) i. e., if the court-fee paid on a memorandum of appeal as in this case, to the first court of appeal is insufficient, it is competent in this court to call upon the appellant in the first court of appeal to make good the deficiency in the court-fee on the memorandum of appeal in that court, and, on his failing to do so, to dismiss the appeal in that court, should the appeal have been decided in his favour, after reasonable time has been allowed to make good such deficiency or in case the appeal in the lower appellate court of the party appealing to this court has been dismissed, to refuse to entertain his appeal to this court until the deficiency is made good, reasonable time being allowed for such purpose, after which, should the deficiency have not been made good, the appeal to this court would stand dismissed." See also *Jani v. Bishen Singh*, 1935 Lah. 698.

**Suit or appeal must come before the court.**—For the adoption of the course prescribed in s. 10 (2) it is necessary that the suit should have come before the court, which evidently means that the appeal should have been registered; because not till then can it properly be said that the suit has come before the court. This of course is mandatory and the power conferred by this provision of the law may be exercised at any time so long as the suit remains before the court in appeal. *Bidhu Bhusan Bakshi v. Kalchand Roy*, 1927 Cal. 775 = 106 I. C. 335.

"Until the appeal was admitted it was not competent to the Judge to pass any order dismissing the original suit", for non-payment of proper court-fee. *Puthia Vittil Govinda Nambi v. Puthia Vittil Parameshwar*, 1 M. L. J. 528.

**Powers of Appellate Court where the suit was beyond the jurisdiction of the first court.**—Where the pecuniary value of the suit was beyond the jurisdiction of the court of first instance but the appellate court decides to proceed with the appeal as though there had been no defect of jurisdiction under s. 11 of the Suits Valuation Act, it can still order payment of the deficit court-fee under s. 12 of the Court-Fees Act. Though the same valuation of the subject-matter may be utilised both for assessing the court-fee and for purposes of jurisdiction, the two matters are quite distinct, and provisions with regard to the one should not be confused with those relating to the other. Because there is a provision of law rendering it un-

other parts of the Empire more difficult, seeing that exports from the Dominions must be paid for in some way, and, if manufactures are barred, payment is rendered more difficult. In the case of Canada the primary producers' reaction to this fact produced the great Progressive or Farmers' Movement, which for a time after the war seemed likely to achieve power throughout the Dominion, and which aimed at the increase of the British preference or even the free introduction of British goods, as a means of counteracting the high prices of their agricultural equipment exacted by the East. The reductions of the customs tariff of Canada resulting from the pressure of this movement, which brought about a slight increase in the British preference, have, on the other hand, afforded the main support of the Conservatives, who fought the elections of 1925 and 1926 frankly on the issue of a higher tariff, and by a certain irony the maintenance of the comparatively moderate tariff depends on the political alliance of Quebec—in itself far from desirous of a lower tariff—with the western admirers of free trade. It is significant that the final determination of the Progressive party in March 1926 to follow faithfully an alliance with the Liberals was motivated by the discovery that the Unionists could make no really valuable concession on the tariff issue. Their defection and Mr. Mackenzie King's defeat in June rested on another issue, and the West showed in September its adherence to lower rates.

The Free State Government in 1926 intimated that it was prepared to consider, subject to the approval of the Dáil, closer economic relations with the United Kingdom, which, of course, forms the best possible customer for Irish exports of natural produce. The establishment of a customs barrier<sup>1</sup> between the two parts of Ireland has not had any effect towards inducing acceptance of union by the north, though there was a certain amount of annoyance on both sides of the line during the early period of the operation of the new régime. Further trouble was caused in 1926 by the decision to lower the duties on spirits in the Free State, thus encouraging smuggling by sea from the south into the north.<sup>2</sup>

<sup>1</sup> The *Tariff Commission Act*, 1926, marks the end of doctrinaire free trade and sets up a Commission to advise as to tariff changes. The Farmers recognize that they will pay the cost. A very weighty and impartial Commission pronounced for free trade.

<sup>2</sup> Canada and the West Indies reached agreement in 1925-6 for a twelve-year treaty, but no great haste in improving the steamship service resulted.

of the valuation of the subject-matter of the suit by the trial court is final between the parties, but this can be reopened by an appellate court if the decision is not only wrong but is also to the detriment of revenue. The case of other wrong decisions by trial court is not touched by s. 12 and there is no finality in such cases of the findings of the trial court nor could the powers of the appellate court to sit in judgment over the findings of the trial court be doubted. But the real difficulty arises from the absence of any provision for the realisation of deficit court-fee in such cases. It is only in s. 12 of the Court-Fees Act is found this provision for collection of deficit court-fee and in cases not covered by s. 12, there is no provision of law under which the deficit court-fee payable in the lower court and detected by the appellate court can be realised.

**Powers of the Taxing Officer.**—It is the *court of appeal* and in the case of High Court, the *court itself* as distinguished from the Taxing Officer thereof that must consider the decision of the lower court erroneous.

The fees mentioned in the first clause of s. 12 are those payable on a plaint or memorandum of appeal in the subordinate courts and the section does not impose on the High Court, as distinguished from the Taxing Officer and the Taxing Judge, the duty of deciding the questions relating to valuation for the purpose of determining the amount of the fee chargeable in the High Court on a memorandum of appeal.

The High Court may undoubtedly, under the second clause of s. 12 require a party to pay an additional fee upon the plaint or memorandum of appeal in the lower court and this power is conferred on the court itself as distinguished from the Taxing Officer whose powers are confined under s. 5 to the fees payable in the High Court, *Per Dawson Miller, C. J. in Krishna Mohan v. Raghunanda*, 4 Pat. 336 at p. 352; see also *Gajendra Nath Saha v. Sulochana*, 39 C. W. N. 131; *Mithoo Lal v. Mt. Chamell*, 1934 A. L. J. 957 = 1934 All. 805.

"A Taxing Officer would be exceeding his powers were he to take upon himself to decide the very question on which the appellant by the memorandum of appeal seeks for a judicial decision of the court after argument on both sides. He would be virtually usurping the powers of the court and would be in reality assuming himself the appellate powers over subordinate Judges." *Raghunath v. Ganghadhar*, 10 Bom. 60 at p. 61. But in *Bahal Kuar v. Narain Singh*, 22 A. L. J. 1038, it was held that the power of the court to decide disputed questions of court-fee is vested in the Taxing Officer, under s. 5 of the Court-Fees Act, subject to his power to refer the matter to the Taxing Judge when a question of general importance arises. This authority extends to all such questions arising in the High Court whether the deficiency alleged is on the memorandum of appeal in the court or on a plaint or memorandum of appeal filed in the court below. It is however submitted that this decision of a single



work of producing sovereigns and half-sovereigns is carried out under the principles adopted in the Royal Mint, but subject to the cost being paid by the local Governments, while the profits adhere to them. The proposal of New South Wales in 1923 to close the branch on the score that it did not pay was abandoned. Silver and bronze coins continued to be imported from the United Kingdom, the importers paying for them at the face value, while the British Government bore the cost of carriage and of replacing worn-out coins. It was, however, agreed in 1898 that the mints at Sydney and Melbourne might manufacture silver and bronze for local use, but this project was not carried into effect, and under the Constitution the matter passed into the hands of the Commonwealth. At the Colonial Conference of 1907 <sup>1</sup> the Commonwealth Government succeeded in securing assent to a plan by which the British currencies should be withdrawn at the rate of £100,000 a year, and a new distinctive currency should be created for Australia, to be manufactured in the first instance in England. From 1916 on, manufacture has taken place in Australia. The Commonwealth Government has, of course, the sole duty of regulating this currency, which has no value outside Australia, unless given such by local Act or Order in Council under the Imperial Act. The legal authority for this coinage is contained in Act No. 6 of 1909, which occupies the whole field, giving validity to gold coined in England or at any branch. It was of course necessary for the effective operation of the Act that the Orders in Council of 1 August 1896 regulating currency in Australia under the Imperial Act should be revoked, and this was done by Order in Council of 23 January 1911.

The Union of South Africa resembles the Commonwealth in having a branch of the Royal Mint at Pretoria, established under Act No. 45 of 1919, which provided an annuity of £40,000 for working expenses, and Royal Proclamation of 14 December 1922, which took effect on 1 January 1923. Further, the Mint manufactures a specific South African silver and bronze coinage, which is authorized by Act No. 31 of 1922. The profits on

in gold production, the Melbourne Mint sufficing. A Mint for Rhodesia has been discussed, but decided against on the score of cost.

<sup>1</sup> *Parl. Pap.*, Cd. 3523, pp. 190 ff., 546 f.; Cd. 3524, pp. 170 ff.; Cd. 5273, pp. 158 ff.; Cd. 5745, pp. 168 f., 370 f.; Cd. 5746-1, p. 204.

was directed to pay, did not pay it. In appeal, the appellate court tried to realise the court-fee in the payment of which default was made. It was contended that s. 12 by its terms was inapplicable. The question of valuation has not been wrongly *decided* by the trial court, and though there had been a detriment of the revenue, it is attributable, not to an erroneous decision of the court upon the question of valuation but to the failure of the plaintiff to carry out the direction of the court. The court held the Act should be so construed as not to permit a chance of escape and a means of evasion and rejected the plea. *Rajarajeswari v. Gati Krishna*, 1924 Cal. 953.

### Realisation of deficit court-fee.

1. **The suit or appeal must be pending before the court.**—The court has no jurisdiction before the plaint or appeal is filed and after the same is disposed of. Once the suit or appeal is disposed of, the court becomes *functus officio* to deal with it in the matter of the realisation of the deficit court-fee. And no order can be passed directing the stoppage of the preparation of the decree or calling upon the parties to pay the deficit. After judgment is pronounced, the decree must follow under s. 33 and O. 20 rr. 6 and 7 C. P. C., and the court has no power to direct that the preparation of the decree be stopped until the payment of the deficit fee. S. 28 of the Court-Fees Act does not empower the court to call upon the parties to pay the deficit after judgment has been pronounced. *Kedar Nath v. Chandra Mauleshwar*, 11 Pat. 532. After the suit is decided, the court is no longer seized of the case and has no jurisdiction to require the plaintiff to make good the alleged deficiency in court-fee. *Mt. Durga Devi v. Mt. Parbati*, 141 I. C. 175 = 1933 Lah. 208, following 82 I. C. 588 and *Jatra Mohan Sen v. Secretary of State*, 46 C. 520 = 52 I. C. 435; see also 152 I. C. 799, cited under s. 10. The court has no power, after the appeal has been disposed of to recover the deficient court fee on the memorandum of objections. *In re Secretary of State for India represented by Collector of Coimbatore*, 142 I. C. 25 = 1933 Mad. 321 (In this case, the previous case law on the point has been reviewed). In *Raja Dev Narain Singh v. Ramil Singh*, 5 P. L. J. 508, it was held that when an appeal has been dismissed by the High Court, under O. XLI, r. 11 of the Code of Civil Procedure, 1908, the court has no power to recover from the respondent who was appellant in the court below, the deficiency in court-fee due on the memorandum of appeal filed by him in that court. In this case the second appeal was dismissed under O. XLI, r. 11 of the Code of Civil Procedure. The respondent before the High Court who was the appellant before the court of first appeal did not pay the full court-fee payable upon his memorandum of appeal in that court. If a decree had been made in his favour in second appeal it would have been perhaps on the authority of *Narain Singh v. Chaturbuj Singh*, competent to the High Court to refrain from signing its decree till the deficit had been paid by the respondent. Their Lordships observed thus:—"The inherent powers of the court would, we think, cover

Sir G. Bowen in Queensland refused to assent to a measure providing for inconvertible paper currency, pointing out that his instructions required him to reserve any such Bill. Ministers resigned in protest, but Mr. Herbert took office and secured the issue of Treasury Bills. In 1895<sup>1</sup> the Newfoundland Government was permitted to stamp the notes of the banks which could not meet them with a guarantee of payment at a valuation to be decided by a joint committee of the two Houses of the Legislature, it being made clear that by assenting to the proposal the Imperial Government took no responsibility of any kind for the redemption of the notes at the amount guaranteed by the Government of the Colony. In 1910 a suspending clause was *ex maiore cautela* inserted in an Act to provide for currency notes, which, however, were really merely orders on merchants for payment of workers' wages, which on presentation to the merchants were immediately dealt with and withdrawn from circulation, thus not forming in any sense an addition to the coinage.

urgent was the need. The incident was vainly cited on 1 July 1926 in the Canadian Commons as an excuse for Mr. Meighen's action (pp. 5492 f.).

<sup>1</sup> *Parl. Pap.*, H. C. 104, 1895, pp. 6-9.

(b) **When the court-fee on the memorandum of appeal is deficient.**—The question of the sufficiency of the stamp on the memorandum of appeal should always be regarded as open until the appeal is finally heard and disposed of. This view applies to Courts subordinate to the High Court and to the High Court when considering the question of the sufficiency of the stamp in the court below under the second part of s. 12. But it is doubtful whether the first part of s. 12 can be held to empower the Bench of the High Court hearing the appeal to reject a memorandum as insufficiently stamped in view of the remarks of Sir Dawson Miller in *Krishna Mohan Singh v. Raghunandan Pandey*, 4 Pat. 336 = 87 I. C. 137 = 1925 Pat. 392 (F. B.), where he expressed the opinion that the power of the High Court to decide the amount of the fee payable on a memorandum of appeal presented to the High Court has been delegated to the Taxing Officer and the Taxing Judge. *Sideshwari Prosad v. Ram Kumar Rai*, 12 Pat. 694 = 144 I. C. 684 = 1933 Pat. 234. If the appellate court finds that the memorandum of appeal is not so properly stamped, then the approved view is that there is no invariable rule that the appellant should be given time to make good the deficit and that time will be given only in cases where there was a *bona fide* mistake by the party and not due to wilful default. A distinction thereby is sought to be drawn between a plaint and a memorandum of appeal and the approved view on a comparison of the language of s. 149 and O. 7, r. 11 of the Civil Procedure Code (for detailed discussion of the several views, see commentaries under s. 6 *supra*) is that the discretion to grant time need not necessarily be exercised in the case of appeals as in the case of the plaints.

**Bombay.**—In *Achuta Ramachandra v. Nagappa*, 38 Bom. 41, a memorandum of appeal was presented on the last date of limitation with a half a rupee stamp instead of the requisite court-fee of Rs. 205. The explanation offered was that the party had no funds. The court refused to grant time and rejected the appeal. Batchelor, J., thought that a memorandum of appeal stood on the same footing, as a plaint. "Section 107 sub-s. 2 of the Code, which reproduces s. 582 of the old Code, provides that the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on the courts of original jurisdiction in respect of suits instituted therein. Moreover, unless the authority to reject such a memorandum of appeal as this is referred to O. 7, r. 11 (c), there is not, so far as we are aware, any authority to which such action of the court could be referred. Then it is urged that this view of the law is in conflict with s. 149 of Civil Procedure Code and that the court could extend the time for the payment of fees on any documents which may be presented to it. But when a particular document is a plaint or a memorandum of appeal, then the court's discretion must be exercised in accordance with the special provisions of O. 7, r. 11 (c). Thereafter s. 149 would come into play and would operate to produce this effect, that upon the payment

These provisions were re-enacted as ss. 735 and 736 of the *Merchant Shipping Act*, 1894, while by ss. 366 and 367 power was given to the Governors of Colonies to issue proclamations regarding merchant ships which should have the force of Imperial Acts, and by s. 264 similar value was given to legislation by British possessions under the power conferred by s. 264 to apply to any ships registered in, trading with, or being at any port of the possession any provisions of Part II of the Act relating to masters and seamen which would not automatically apply in the case of ships not registered in the possession.

The Imperial Act also provides for recognition being given to local examinations for certificates for masters and mates, and for marking of loadlines. Moreover, the Act of 1854, as amended in 1862,<sup>1</sup> gave power to colonial courts of inquiry to investigate cases of misconduct by masters or mates, and to cancel or suspend certificates, subject to an appeal to the High Court in England or to the Board of Trade. This was extended by an Act of 1882 to meet the ruling of the Supreme Court of Victoria<sup>2</sup> that the Act did not empower the Navigation Board of that colony to inquire into a case of a collision occurring off the South Australian coast, and now stands as s. 478 of the Act of 1894.

In some cases Imperial legislation or local legislation are possible alternatives, or the latter may supplement the former. Thus s. 238 gives the Crown the widest power to provide for the surrender of deserters in case where provision is made by the foreign country for reciprocal treatment, but local Acts are often passed, under which action is normally taken in lieu of under Imperial Orders in Council.

Disputes between the Imperial and local Governments have not been rare, and surrender of the right of intervention cannot in such cases be expected, because it corresponds to the right possessed as against foreign nations to make representations, and, if essential, to adopt measures of reprisal in order to prevent differential treatment of British shipping. Canada in 1878 endeavoured to regulate the space to be occupied by deck cargoes in the case of all ships visiting Canada, repealing as

<sup>1</sup> 25 & 26 Vict. c. 63.

<sup>2</sup> *In re Victoria Steam Navigation Board, ex parte Allan*, 7 V. L. R. 248; 45 & 46 Vict. c. 76 (now 57 & 58 Vict. c. 60, s. 478).

not prepared to differ from the exercise of the judge's discretion in admitting the appeal."

**Patna.**—In *Ramshay v. Kumarlakshminarayan*, 3 P. L. J. 74 = 42 I. C. 675, the appeal was presented on the last day of limitation with an insufficient court-fee and the reason stated was that "it is the practice of the courts in such cases to receive the appeal and to allow time to make good the deficiency." The learned judges observed "S. 4 of the Court-Fees Act, 1870, forbids the High Court to receive a memorandum of appeal unless the proper court-fee is paid. Section 6 contains a similar provision with regard to other courts. Section 28 of the same Act, which obviously does not apply to the cases now before us, make provision for stamping a document, which has, through mistake or inadvertence been received, filed or used by a court though unstamped or insufficiently stamped. Section 149 of the Code of Civil Procedure provides that where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the court may in its discretion at any stage allow the person by whom such fee is payable to pay the whole or part as the case may be, of such court-fees, and upon such payment, the document in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance. It has been held that in the case of the plaint insufficiently stamped the court is bound under O. 7, r. 11, (s. 54 of the Code of 1882) to give the plaintiff time to make good the deficiency. *I doubt whether the legislature intended that time should be given as a matter of course even where the plaintiff has deliberately and without any excuse paid an insufficient court fee*, but it is too late to question the rulings on this point. Some courts held that s. 54 of the Code of 1882 was by s. 582 of the Code made applicable to an appeal. The contrary view was expressed by the Full Bench in *Balkaran Rai v. Govindanath Tiwari*, 12 All. 129, and a new s. 582-A was then added to that Code. Section 149 of the present Code takes the place of s. 582-A of the Code of 1882 and vests a very wide discretion in the court, but in my opinion s. 149 should not be construed in such a way as to nullify the express provisions of s. 4 of the Court-Fees Act. When the amount of the court-fee payable is open to doubt, or the amount of the fee cannot be ascertained by the court till the record is received, or it appears that the appellant has made an honest attempt to comply with the law, the court may properly receive the appeal and allow time for the deficiency, if any, to be made good. In the cases before us, the appellants have deliberately, and to suit their own convenience, paid on their appeals insufficient court-fee, in fact they have paid only a small fraction of the fees which they admit are payable by them. In such cases, the court is not in my opinion, bound to receive the appeal and give the appellant time to make good the deficiency. Assuming that the court has power to receive these appeals, and allow time for the deficiency to be made good, I think we should be exercising our discretion in an unreasonable manner if we were to do so."

But there remains a great field of doubt as to whether provisions of local Acts are or are not repugnant to the Imperial Act ; is silence in that Act a proof that no further regulation is possible ? This seems implausible, unless further regulation is by necessary intendment excluded, so that the Commonwealth may properly regulate the examination of ships in supplement to the Imperial Act. Other cases are clearly instances of repugnancy ; thus the authority given to the Governor of a Colony to authorize a prosecution for sending a British ship to sea in an unseaworthy condition ought not to be given to a minister, even though the Governor will normally act on ministerial advice, and the appropriation of the proceeds of wreck by the Dominions was technically *ultra vires*, as these revenues had been surrendered by the Crown in return for the British civil list. On the other hand, the provisions of the New Zealand Act and of subsequent Commonwealth legislation as to lighthouses might well be valid as supplementary to the provisions as to lighthouses made in Part XI of the Imperial Act of 1894, which secures contributions on a wider basis from foreign ships, and not merely from such ships as actually enter colonial ports.

In view of the utter divergence of opinion as to the legal powers of Dominion legislatures it was fortunate that the Navigation Conference of London <sup>1</sup> in 1907, on which the writer was one of the representatives of His Majesty's Government, was able to arrive at satisfactory results. It agreed by resolution 9 that

the vessels to which the conditions imposed by the law of Australia or New Zealand are applicable should be (a) vessels registered in the Colony, while trading therein, and (b) vessels, wherever registered, while trading on the coast of the Colony ; that for the purpose of the resolution a vessel shall be deemed to trade if she takes on board cargo or passengers at any port in the Colony to be carried to and landed or delivered at any port in the Colony.

But a vessel was not to be deemed to be engaged in the coasting trade if she merely took on board and carried between two colonial ports through passengers from overseas or going abroad, or merchandise conveyed or to be conveyed on through bill of lading from or to an oversea port.

The outcome of the Conference was the decision of New

<sup>1</sup> *Parl. Pap.*, Cd. 3567, p. v. See also Cd. 4355.

dismissed, the appeal automatically lapses. Another difficulty may arise in the following case. The plaintiff defaults in paying the proper fee but gets a decree. The defendant appeals and the appellate court holds that the proper fee has not been paid in the lower court. Section 10 (ii) says that the suit shall be stayed. It cannot be construed literally as there is no *suit* to be stayed. Nor does it appear to be proper to stay the appeal for the party aggrieved by the decree who seeks to vacate it being the appellant, it is he, who is prejudiced by the stay of appeal, while the defaulter is the plaintiff respondent. But there is no good in proceeding with the hearing of the appeal on the merits until the plaintiff respondent makes good the deficiency due on his plaint. In the event of his making default in such payment, his suit may have to be dismissed under s. 10 (2), having the same effect as appeal being allowed. The only way perhaps for the procedure laid down to be adhered to, without prejudice to the defendant appellant is while staying the hearing of the appeal also at the same time stay execution of the decree of the lower court. In *Rowlins v. Luchmi Narain*, 3 Pat. L. J. 443, the court has held that where the plaintiff respondent has failed to pay the proper fee in the court below, no decree shall be executed in his favour until the deficiency is made good. But what is to happen if the decree has already been executed by the decree-holder plaintiff so that any postponement of the hearing of the appeal is prejudicial to the defendant appellant rather than to the defaulter the plaintiff respondent? It is submitted that there is no way out of the difficulty except to minimise the hardship by staying the hearing of the appeal to the shortest possible period. S. 10 (2) authorises the court to dismiss the suit of the plaintiff-respondent if the additional fee is not paid within the time fixed. That has the effect of allowing the appeal and the defendant will be enabled to proceed by way of restitution. But in Bengal by virtue of the Amending Act of 1935, it appears that the court cannot dismiss the suit but can recover the deficit as a public demand. Some of these and similar difficulties are sought to be solved in the decisions set out hereunder. The noticeable feature is that courts being conscious of the defective nature of s. 12 have fallen back on occasions on their inherent jurisdiction holding that s. 12 is not exhaustive and that their powers to rectify mistakes or do justice is not confined to the actual wording of the section. Various methods are suggested *viz.*, to refuse to hear counsel, to stay the signing of the decree, to refuse to issue the decree etc., thereby putting pressure on the defaulting party taking the view as expressed in *Barjanath v. Dhani Ram*, 117 I. C. 107 = 1929 All. 571, that it is open to the courts to take all lawful means for the collection of the court-fee and the carrying out of its own orders.

#### **Default by respondent—Issue of decree to be stayed.—**

Where it was discovered in second appeal in the High Court that the respondent when appellant in the lower appellate court has not paid sufficient court-fee on his memorandum of appeal in that court



Chief Justice of New Zealand that an award of the Court of Arbitration had binding effect on ships registered in New Zealand, even when in Australian ports, but was not effective on Victorian registered ships. The decision, which was very probably sustainable under s. 735 of the *Merchant Shipping Act*, 1894, was not based on that section, but on the alleged power of the Parliament of New Zealand to regulate its own ships and subjects. More far-reaching was the decision in *Huddart Parker & Co. Proprietary Ltd. v. Nixon*,<sup>1</sup> which raised the question whether under s. 75 of the *New Zealand Shipping and Seamen Act*, 1908—a consolidation of the old legislation—it was possible to insist on extra wages being paid while a vessel was engaged in the coasting trade, and to enforce this provision by authorizing the Port Superintendent to withhold a clearance. The ship in question was registered in Victoria, and her rates of pay were regulated by an award of the Commonwealth Court of Conciliation and Arbitration, so that a direct conflict between the two laws arose. The Court held the power effective in so far as a seaman could insist on obtaining his extra remuneration, and a clearance could be withheld. But it denied that the power to regulate coasting gave authority to repeal any provision of the Imperial Act of 1894—in special that one which does not permit a seaman to claim his full wages in any Court abroad if he is engaged for a voyage to terminate in the United Kingdom, or that it should be held to allow the repeal of the corresponding section in the Victorian Act. This Act was erroneously treated as if it had mere colonial force, despite the fact that under s. 264 of the Imperial Act of 1894 it was expressly given Imperial validity. It does not seem, however, that there was sufficient ground for denying that the power to regulate the coasting trade gave power to repeal. It is true that regulation may be held to refer merely to opening or closing the trade, but so narrow a view is implausible, and certainly has not been accepted by the Commonwealth Government or indeed any Government. The Court, however, overlooked a very serious obstacle to the validity of the New Zealand application of s. 75 of the Act. Under the Commonwealth constitution, as mentioned, the award of the Commonwealth Court would seem to have been given validity everywhere, so

<sup>1</sup> 29 N. Z. L. R. 657 ; Keith, *op. cit.*, xi. 294-9.

subject-matter of the suit, and consequently dismissal of an appeal is not tantamount to a dismissal of suit in all cases where the appellant is the plaintiff. It is for consideration therefore whether under the Bengal s. 12 both the appeal and the suit are expected to be dismissed. But this is not clearly brought out. If the appellant is the defendant and the respondent has not paid the proper court-fee on the plaint in the lower court, then it is provided that the procedure indicated above should be followed as far as it would apply with this difference that if the party bound to pay defaults, the suit is not to be dismissed but the amount of the deficit is to be collected from the defaulting party as a public demand. It may be observed that this is quite an innovation. The accepted principle hitherto was that no party could be pursued and deficit court-fee if any collected from him after the termination of the litigation. The levy of court-fee is different from that of stamp duty in this respect. The utmost sanction against the defaulting party is refusal to hear his case and dismiss a suit or an appeal as the case may be. This provision which enables the Crown to proceed against a litigant for arrears of court-fee after the litigation is over and courts have lost jurisdiction, is quite a new principle in the law of court-fees. It is for consideration that once this principle is accepted, what logical extensions thereof may not be possible and whether it may not work a hardship in at least some cases where a plaintiff might perhaps have elected not to pursue a suit if he was directed to pay a particular amount of court-fee.

**Conditional decree not to be passed.**—"As plaintiff did not pay the deficient court-fees as soon as the first issue was decided against him, the subordinate judge should have held that the suit had been properly dismissed. The District Munsiff ought to have called upon the plaintiff to pay the deficient court-fee; as he failed to do so, the subordinate judge was not in error in entertaining the appeal and dealing with it; but he should have passed no decree until the fees due had been paid and if they were not paid he should have dismissed the suit. \* \* We have to observe, however, that *the court-fee should have been collected before the passing of the decree* and the decree is clearly irregular in directing that in default of payment of the fees, the prayer for possession alone would be disallowed instead of saying that the suit would stand dismissed." *Krishnaswami v. Sundarappier*, 18 M. 415.

**Where a second appeal was dismissed under O. 41, r. 11, C. P. C.**—Such a case arose in *Rajdeo Narain Singh v. Ramdil Singh*, 58 I. C. 271—5 P. L. J. 508. It was held as follows:—"Wherever it is intended to recover deficit court-fee from a respondent before the High Court in respect of something due in a lower court, the proper course is to admit the appeal for hearing, and to take action under s. 12, read with s. 10 of the Court-Fees Act. The court is then in full seisin of the case, and can punish the defaulting plaintiff or appellant as the case may be, by the dismissal

from vexatious interference, to which foreign shipping could not be subjected without causing retaliation, which would fall on British shipping. Sir W. Laurier revived the impossible doctrine that the Act of 1894 was an overriding of Canadian autonomy, asserting, as did Mr. Brodeur,<sup>1</sup> that it had rendered invalid earlier Canadian legislation, which in point of fact had never been valid at all. The Commonwealth delegation asserted that it was satisfied that it had full powers, which, as Sir J. Ward pointed out, was more than dubious. In the result, only Canada and New Zealand asked for extended authority, and nothing was even promised, still less done, to meet their desire. The Bill of 1910 (No. 85) was never assented to, but an Act, No. 37 of 1911, was passed by New Zealand in accordance with the understanding on which her legislation of 1909 was permitted to become law, disclaiming the right to regulate the terms of bills of lading for carriage of goods to New Zealand. In 1912 the Commonwealth Navigation Bill was passed, and being reserved, was duly assented to. The Government withdrew at the last moment, under firm pressure from the Imperial Government, a clause which endeavoured to provide that, if a certificate had been withdrawn in Australia and restored by the Board of Trade, it must not be used in Australia. On the other hand, it insisted on retaining a clause providing for the adoption all year round of the winter loadline, or in the case of sailing ships the North Atlantic loadline, in respect of the carriage of deadweight cargo other than coal, though the wisdom as well as the legality of the enactment was open to the gravest doubt. But the effective coming into operation of the Act was long delayed by reason of war conditions, and it was very extensively amended in 1920 in order *inter alia* to include the provisions as to safety of life at sea agreed on at the Conference of 1913-14, at which Canada, the Commonwealth, and New Zealand were all represented. By this Act it was made clear that many provisions applied not merely to ships registered in the Commonwealth, but also to other British ships whose first

<sup>1</sup> In point of fact the Canadian law, alleged to have been overridden, was never valid, for it dealt with limitation of liability and presumption of fault on breach of collision rules, both matters on which Canada never had power to legislate contrary to the Imperial Acts (see ed. 1, iii. 1525, n. 2). The latter point is now disposed of by the *Maritime Conventions Act*, 1911.

**Jurisdiction of appellate court to act under clause 2 where only one defendant appeals.**—The plaintiff sued four persons to recover arrears of rent, and three parcels of land demised to the Karnavan of defendants Nos. 1 and 2. The District Munsiff passed a decree for the plaintiff, against which defendant No. 4 who asserted a jenmi right over part of the land in question preferred an appeal. In that appeal, the District Judge considering that the suit had been improperly valued, made an order requiring the plaintiff to pay additional fee, on non-payment of which the suit was dismissed.

"The order of the District Judge in dismissing the suit for failure of plaintiff to pay additional stamp duty demanded was irregular for the following among other grounds. In the first place he had no jurisdiction over the whole subject-matter of the suit, the appeal by 4th defendant, relating to one item only. Secondly the appeal had not been admitted when the order was passed, and therefore the matter was not before the judge in such a shape that he had jurisdiction to make any order." *Kerela Verma v. Chadayan Kutti*, 15 M. 181.

**Procedure where both the parties to the appeal have to pay deficit court-fee.**—Where a plaint is not properly stamped and a decree is given in plaintiff's favour and objection is taken in appeal, the appellant should be made to pay the proper court-fee before the respondent is called upon to pay the deficient stamp duty payable in the court of the first instance. *Gungadhara Ayyar v. Veta Chetty*, 14 M. L. J. 144.

**Written statements pleading a set-off should be treated as a plaint.**—O. 8, r. 5, C. P. C., provides that where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff not exceeding the pecuniary limits of the jurisdiction of the court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may at the first hearing of the suit but not afterwards unless permitted by the court, present a written statement containing the particulars of the debt sought to be set off. And it is further provided that the written statement shall have the same effect as a plaint in a cross suit.

**Court-fee should be paid for set off.**—In *Chennappa v. Raghunathan*, 15 M. 29 it was held that the written statement should be regarded as a plaint in regard to the set off and should be stamped accordingly. "It is open to the District Judge under s. 12 of the Court-Fees Act to direct the defendant to pay the court-fees on his written statement before the set off could be allowed." *Maniklal Vadilal v. Chandulal Balabhal*, 94 I. C. 646 = 28 B. L. R. 525 = 1925 Bom. 343.

**Where the plea of set off is allowed by lower court, without collection of fee.**—When a document is admitted by the

it for them to adopt them or not as they thought best. In the case of the convention achieved in 1914, the *Merchant Shipping (Convention) Act*, 1914—whose operation is still delayed—applied generally to ships registered in the United Kingdom, but it imposed on British ships not so registered the obligation, if entering or proceeding to sea from a port in the United Kingdom, of compliance with the rules as to construction, equipment, and manning of ships, and the provision of wireless telegraphy, that are required in the case of registered ships. There is thus a certain disparity of treatment; the Imperial Act binds British registered ships everywhere, even in Dominion harbours; but Dominion registered vessels are bound in British waters by the Imperial Act. What is much more serious is the fact that, as the Act does not apply to ships not registered in the United Kingdom the provisions of Part I, these vessels are not liable to the rules which require masters to report derelicts; to observe certain rules of navigation in the vicinity of ice; to give aid on hearing wireless calls, &c. If they are to be made subject to these rules, it must be by Dominion legislation, and the Act leaves it wholly undecided whether or not such local legislation can be enforced in British Courts. If it cannot, then by registration in a Dominion a vessel might evade the Act, since it need never proceed to its home port. The same question remains unanswered as regards legislation by the Dominions as to registered ships generally or coasting vessels. Does such legislation bind a ship in a British port,<sup>1</sup> and can a British Court enforce it? As under s. 735 a Dominion legislature can repeal provisions of the Imperial Act of 1894 referring to ships registered therein, it might seem that the new provisions must be treated as if enacted Imperially, but the matter was evaded in the controversy as to loadlines with Canada. The Board of Trade there countered the Dominion contention, by pointing out that the assumption that the new loadline proposed by Dominion legislation for registered ships could be deemed to have in British ports Imperial validity was contradicted by the express provision of the Act for the recognition on certain conditions of colonial marked loadlines as equivalent to British marked loadlines.

<sup>1</sup> Similarly, can consular officers and Naval Courts enforce Dominion legislation? Cf. Cmd. 2768, p. 19.

**Civil Procedure Code.**—The references in the section to the old code of 1859 should now be taken as referring to the corresponding provisions of the Code of 1908, (See s. 158, C. P. C.) Consequently the words “in the Code of Civil Procedure” must be read as “in the Code of Civil Procedure 1908” and the words “in s. 351” must be read as “in O. XLI, r. 23, in the first schedule.”

**Inherent powers of court.**—Sections 13, 14 and 15 exhaust the provisions in the Court-Fees Act regarding the refund of court-fees paid in the suit or in appeal. But they do not oust the inherent jurisdiction of a court.

Section 151 of the C. P. C. is a new section first enacted in the Code of 1908, whereby there is a saving of the “inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” Of course it is hardly necessary to observe, considering the wide discretion given in the section that courts are to invoke its aid only in cases where there is an imperative necessity for same to remedy manifest injustice and in the absence of any other statutory provision bearing on the case.

It was held in *Chandra Dhari Singh v. Tippian Prasad Singh*, 3 P. L. J. 452, that the High Court has inherent power to make an order directing the taxing officer to issue the necessary certificate to enable an appellant to apply to the revenue authorities to obtain a refund of any excess court-fee paid on the memorandum of appeal. A court has jurisdiction to order a refund of court-fees in cases which do not fall within any of Ss. 13, 14 or 15. See *Mahammad Sadiq Ali Khan v. Ali Abbas*, 7 Luck. 588=146 I. C. 789=1933 Oudh 170 following 14 W. R. 47; 40 Cal. 365=20 I. C. 498; 7 Rang. 88=117 I. C. 585=1929 Rang. 158; 8 Bom. 313 (F.B.); 35 Mad. 567=10 I. C. 201; 83 I. C. 829=1925 Oudh 39. In *Galstaun v. Raja Janaki Nath Roy*, 38 C. W. N. 185=152 I. C. 215=1934 Cal. 615, it has been held that s. 13 is not exhaustive and that the High Court may, in suitable cases, exercise its inherent powers vested in it by s. 151, C. P. C. and order refund of court-fees paid.

“Where a plaint or memorandum of appeal is returned as insufficiently stamped the court has *inherent* jurisdiction to order refund of stamp paid.” *Bhuvaneswari v. Kishan Dayal*, 72 I.C. 405.

In a recent Madras case, it has been held that the court can order a refund of court-fees (1) where the Court-Fees Act applies, (2) where there is an excess payment by mistake, and (3) where on account of a mistake of a court a party has been compelled to pay the court-fees either wholly or in part. Outside these cases, it has been held, the court has no authority to direct a refund. Thus where an appeal is withdrawn and consequently dismissed, the appellant is not entitled to apply for a refund of court-fees paid on the memorandum of appeal. In *re Chidambaram Chettiar*, 57 Mad. 1028=67 M.L.J. 321=1934 Mad. 566. In C.M.P. No. 1402 of 1933, decided

## VIII

### COPYRIGHT LEGISLATION

COPYRIGHT affords a remarkable instance of Imperial control asserted without shadow of constitutional justification, simply because the publishing interest in the United Kingdom possessed sufficient power to induce the Governments of the day to press their claims. The Imperial Act of 1842<sup>1</sup> regarding copyright gave it in the Dominions as well as the United Kingdom, and accordingly prohibited by s. 17 the importation of reprinted copies on pain of a fine and double the value of each copy imported. The Legislatures of the Canadian Provinces pointed out with much cogency that in view of American reprints the carrying out of the Act was impossible and undesirable. In 1847,<sup>2</sup> therefore, power was taken by Order in Council to suspend the operation of s. 17 whenever local provision was made to secure a due return for the author. Canadian legislation from this date to 1850 made such provision, and on the formation of the Dominion proper provision was continued by c. 56 of 1868, which was followed by an Imperial Order in Council of 7 July 1868. But the arrangement of imposing import duties brought little gain to authors, while Canadian printers complained that American reprints were thus able to oust them from having any share in the work. Their complaints were adopted on 1 July 1868 by the Finance Minister, who asked the Imperial Government to secure permission for reprinting in Canada at a royalty of 12½ per cent. on the published price. The Imperial Government demurred that it was uncertain if this would result more favourably to the author than the import duty; that it would make reprints cheaper than the original; and that it would need the termination of existing copyright conventions with foreign powers. The Dominion Government was not convinced, and in 1872<sup>3</sup> passed a Bill, which the Governor-General reserved, and which required reprinting of British copyright works within Canada in a month,

<sup>1</sup> See on it *Parl. Pap.*, C. 7783, p. 17; *Prov. Leg.*, 1867-95, pp. 1281 ff.; Quick and Garran, *Const. of Commonwealth*, pp. 594 ff.

<sup>2</sup> 10 & 11 Vict. c. 95.

<sup>3</sup> *Parl. Pap.*, H. C. 144, 1875, pp. 5-7.

*Manick Lal Chandra*, 107 I. C. 825 (Pat.) See also *Mst. Deba v. Secretary of State*, 1935 A. L. J. 376 = 1935 All. 455, as to refund of court-fees mistakenly collected by lower court.

### Class (b).

In cases falling under class (b) also refunds have been ordered. See the recent decisions of the Madras High Court in L. P. A. 30 of 1931, C. M. P. No. 1737 of 1932, C. M. P. No. 695 of 1933, C. M. P. No. 4631 of 1933, C. M. P. No. 6231 of 1933 and C. M. P. No. 2351 of 1934. The Calcutta High Court is also of the same view. See 38 C. W. N. 185 cited *supra*. It is submitted that it is only for the sake of convenience court-fees are collected in the shape of stamps under s. 25 of the Court-Fees Act. Section 4 of the Act lays down that no document chargeable with fees shall be *received*, fixed or exhibited in the court unless the proper fee is paid. Therefore even at the outset such insufficiently stamped documents ought not to have been received at all. It is because the receiving clerk in the office could not obviously check and find whether the papers presented are in order, before he receives it into the office, such insufficiently stamped documents happen to be received. For the simple reason that what ought not to have been received has been received by inadvertence, the person presenting the paper ought not to be in a worse position by the document he presents being taken into the office than he will be if the receiving officer refused to take it. The dismissal of a petition to excuse delay in presentation or re-presentation is only tantamount to saying that the presentation is not a proper presentation. If the presentation is not a proper presentation then the appellant or petitioner is entitled as a matter of equity to be relegated to the position he would be in, if the office had declined to receive his insufficiently document even at the outset. It is therefore submitted that in such cases, the appellant is entitled to the refund of court-fee paid by him in the shape of stamps and mutilated by the office. This order could be made by courts by virtue of their inherent powers though it is submitted not by any power under section 151, C. P. C.

### Class (c).

Cases falling under class (c) stand on a different footing altogether. They are cases where after the memorandum of appeal and connected records are returned for rectification of some defects, the appellant does not re-present them, but desires to withdraw the same for several reasons, as inability to pay the proper fee, settlement of claims, etc. In cases where the return is not for any deficiency of court-fee but for the rectification of other defects, and the appellant *chooses* not to proceed with the appeal, it appears that the court-fees could not be refunded. But refunds have been ordered even in such cases in Madras, see C. M. P. Nos. 3292 and 3293 of 1934 (this is a case where the appellant represented that the delay in re-presentation need not be excused); C. M. P. No. 4600 of 1933 (where the appeal was



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### Certain specific cases considered.

1. *Compromise of suit*.—Merely because the suit was not tried but was compromised that is no ground for refund of court-fee. *Land Mortgage Bank v. Gregory Paul*, 4 Bom. L. R. App. 96.

2. *Where appeal is dismissed as not maintainable*.—Where the High Court dismisses a second appeal on the ground that no second appeal lay from the decision appealed against, the court-fee paid on the memorandum of appeal cannot be refunded. *Jagadish Coudhury v. Radha Duhay*, 6 Pat. 599=1928 Pat. 35.

3. *Where the appeal has been heard*.—Where the appeal was stamped after the period of limitation and counsel argued in support of it, but the appeal was held time barred, no refund could be granted. *Annamalai v. O. M. R. M. Chetty Firm*, 22 I. C. 884. *Mirza Muhammad v. Rajballab Nath*, 107 I. C. 320. But see 38 C. W. N. 185 cited *supra*.

4. *Dismissal for default of payment of deficit court-fee*.—It was held in *Janak Prasad v. Askaran Prasad*, 6 Pat. 602=105 I. C. 742=1928 Pat. 29, that where the appellant was given time to pay the additional court-fee and on his default the appeal was dismissed, there could be no refund and that further the Registrar has no power to put a party on terms as to payment of court-fee.

5. *Mistake of party*.—Where in a partition suit, the final decree was drawn up on a court-fee stamp instead of on a non-judicial stamp as it ought to be, the plaintiff is not entitled to a refund. *Maulavi Rafiuddin v. Syed Ahmed*, 7 I.C. 94=14 C.W.N. 1101. But in *Muhammad Roser v. Rajballabnath Singh*, 107 I.C. 320, it was held that the Court has power to make an order for refund of excess court-fee paid under a *bona fide* mistake. See also 40 C. 365.

6. *Appeal found unnecessary*.—Where the appeal was found to be wholly unnecessary and no proceeding except the admission of the appeal had taken place in respect thereof, the Lucknow High Court held that it had jurisdiction to order a refund of court-fee even though the case did not fall within s. 13, 14 or 15. *Mahomed Sadiq Ali Khan v. Saiyid Ali Albas*, 7 Luck. 588=1933 Oudh 170.

**Refund under this section.**—The section specifies the circumstances when the refund could be granted. They are :

(A) When the plaint or appeal is *rejected* by a court on any of the grounds mentioned in the Code of Civil Procedure and is ordered by the appellate court to be received. The relevant provisions of the code are :

1. O. VII, r. 11, which provides that a plaint shall be rejected

(a) Where it does not disclose a cause of action.

(b) Where the relief claimed is undervalued and the plaintiff on being required by the court to correct the valuation within a time to be fixed by the court fails to do so,

matic, excluding any idea of requirements of local printing or publication. The Imperial Act of 1886 was made operative in Canada by Order in Council of 28 November 1887; but in 1889 the Governor-General forwarded an Act (c. 29) which, however, was only to come into force on proclamation by the Governor-General, and asked for authority to proclaim the Act. The Act offered copyright in Canada for twenty-eight years on condition of printing there: if the offer was not accepted, any person might obtain a licence to reprint on paying 10 per cent. on the retail price, and, if sufficient copies were made available, all importation might be prohibited, save of books enjoying copyright in the United Kingdom and lawfully printed and published there. It was requested, of course, that the convention should be terminated as regards Canada, as it was clearly not in accord with the policy of the Act, and was proving of no gain to Canada.<sup>1</sup> Lord Knutsford<sup>2</sup> simply refused the request to permit the Act to become operative, or to denounce the convention for Canada, and his grounds were simply that publishers held that a month was much too short a time for them to obtain copyright in Canada, and that they objected to the licence system. He held that the matter must stand over, pending the outcome of negotiations for a convention with the United States.

In 1891 the United States<sup>3</sup> conceded a copyright conditional on printing, but only in cases where local copyright in other countries was given to the citizens of the United States on the same terms as to subjects of that country, and the privilege was accorded to British subjects on an assurance from the Imperial Government that copyright could be obtained in the United Kingdom by mere publication, and in other possessions was accorded on the same conditions as to British subjects. In effect what was meant was that by mere publication at London an American citizen obtained copyright in Canada, whereas a British subject had to print in the United States to obtain copyright. Canada again pressed for the termination of her bondage, and her case was considered by a department committee<sup>4</sup> representing the Foreign and Colonial Offices and the Board of Trade, which reported strongly against accepting

<sup>1</sup> *Parl. Pap.*, C. 7783, pp. 4-9.

<sup>3</sup> *Ibid.*, C. 6425.

<sup>2</sup> *Ibid.*, pp. 12 f.

<sup>4</sup> *Ibid.*, C. 7783, pp. 43-56.

*Thakur Das Tulsi Ram*, 141 I. C. 450=1933 Lah. 135. But see *Ram Chand v. Bhagwan Das*, 1935 Pesh. 8, in which it has been held that s. 151 C. P. C. cannot be invoked to grant refund when a remand is made under that section.

**Preliminary point.**—The remand must be one under O. 41, r. 23, C. P. C. *Jagannath v. Maruti*, 36 I. C. 241; *Nand Kumar v. Bilasram*, 43 I. C. 855; *Mahamod v. Fateghar*, 1927 Lah. 196=100 I. C. 49. If a remand can be deemed to have been made on any of the grounds mentioned in O. 41, r. 23, C. P. Code, the appellant is entitled to a refund certificate under the section, although the appellate court erroneously purports to make the remand under s. 151, C. P. Code. *Sushila Mala Patta Mahadevi v. Sumanto*, 151 I. C. 721=40 L. W. 372=1934 Mad. 643. To attract the operation of s. 13, the lower court must have disposed of the suit on a preliminary point.

**And what is decision on a preliminary point?** It is not a case decided upon the whole evidence and upon all the issues raised in the suit. See 92 I. C. 1045; 96 I. C. 786; 98 I. C. 906 and 103 I. C. 537.

There is no definition in the Code of Civil Procedure as to what a preliminary point is. It means and includes all points or issues of fact or law the determination of which precludes the necessity for the determination of the other points or issues of fact or law and which determination disposes of the entire suit. *Sheoambar v. Lallu Singh*, 9 A. 26; *Muhammad Allahabad v. Ismail*, 10 A. 289. See also 99 I. C. 974 and 30 A. 165=37 I. C. 383 for the meaning of what is meant by a preliminary point. Preliminary point means a matter preliminary to the determination of the suit which the parties bring before the court for decision. *Krishnan v. Muthan*, 22 M. 172.

"A preliminary point under O. XLI, r. 23 of the Civil Procedure Code is any point the decision of which avoids the necessity for the full hearing of the suit. \* \* Such point comprises not only points like limitation, jurisdiction and *res judicata*, but also points such as that evidence tendered was not admissible, or that there was no case for the defendant to answer, or that there was no proof of publication in a libel suit. In all these cases the points are preliminary to the final disposal of the suit.

"The words 'preliminary point' occur in s. 562 of the Civil Procedure Code of 1882 which corresponds to the present O. 43, r. 23 and are interpreted by Mahmood, J., in *Ram Narain v. Bhawanidin* where it is laid down that the words are not confined to such legal points only as may be pleaded in bar of suit but comprehend all such points as may have prevented the court from disposing of the case on the merits, whether such points are pure questions of law or pure questions of fact; and he gives as an instance a mortgage suit in which it is held that the plaintiff is not a son and heir of the mortgagor and therefore the suit is dismissed without entering into the merits of the various pleas relating to the mortgage. The same view

was anxious to secure Canadian adherence to the new convention arranged at Paris in 1896, in connexion with which Mr. Hall Caine in 1895 and Mr. Thring in 1899 paid visits to the Dominions. In 1900 a compromise on a small point was reached; where a book which had copyright in Canada had been produced in some part of the British Dominions other than Canada, then on proof of the issue of a licence to reproduce the work in Canada, the importation of any other copies of the work might be prohibited, thus securing protection for a Canadian publisher. In 1901 Mr. Mills, Canadian Minister of Justice, discussed the situation with Mr. Chamberlain, but no result was reached. In 1902-3 the Canadian Courts decided in *Imperial Book Co. v. Black*<sup>1</sup> that it was no longer legal to import into Canada reprints in America of British copyright works, in that case the ninth edition of the *Encyclopædia Britannica*. The ground of the decision was simple; the prohibition of s. 17 of the Act of 1842 was suspended by Order in Council under the Act of 1847, for such period only as arrangements were in force in Canada for collecting a duty on imported reprints for the benefit of the author, and, when that lapsed, the Order in Council ceased to operate. The Privy Council refused leave to appeal, showing that it agreed with the decision, and in 1903 its decision in *Graves v. Gorrie*<sup>2</sup> showed that the *Fine Arts Copyright Act* did not apply beyond the United Kingdom, so that protection for British authors in respect of pictures, drawings, and photographs, probably also sculpture and engraving, did not exist in the Dominions. Moreover, the need of revision of the International Convention led to a Conference at Berlin in October and November 1908 which produced vital changes in the Convention. The matter was first considered in England by a strong committee under Lord Gorell, and then by a subsidiary Imperial Conference<sup>3</sup> which resulted in resolutions in favour of a new Imperial Act to extend to all the Empire, save to the self-governing Dominions, which were to be free to declare it in operation subject to changes as regards procedure and remedies. If any Dominion adopted the Act, it

<sup>1</sup> 35 S. C. R. 488; (P. C.) 21 T. L. R. 540. The argument that s. 152 of the *Customs Consolidation Act*, 1876, applied to Canada was rejected in view of s. 151, as Canada had made full provision as to her customs (s. 151).

<sup>2</sup> [1903] A. C. 496.

<sup>3</sup> *Parl. Pap.*, Cd. 4976, 5051, 5272.

refund of court-fee. S. 13 of the Court-Fees Act provides that where a suit is remanded in appeal on any of the grounds mentioned in s. 351 of the Code, the court-fee paid on the memorandum of appeal should be refunded. The Code referred to is the Code of 1859. This was re-enacted as s. 562 in the Code of 1882, and the corresponding provision of the present Code of 1908 is O. 41, r. 23. Under s. 8 of the General Clauses Act (X of 1897), the reference to the Code of 1859 is to be taken to be to the corresponding Rule under the present Code. The effect is that under r. 23 courts can remand *any* case and under s. 13 Court-Fees Act, the appellant is entitled to a refund of court-fee paid on the appeal memorandum in *all* cases of remand. It is for consideration how far the effect of the amendment on the Court-Fees Act was realised, when r. 23 was re-enacted in Madras recognising the judicial decisions that laid down that courts had inherent powers to remand cases and the same was not controlled or limited by O. 41, r. 23 C. P. C.

**Remand on addition of parties.**—Where the appellate court directed the lower court to add certain parties and retry the suit it was held to be an order upon a preliminary point. *Jadav v. Anath Bandhu*, 37 C. 171 = 5 I. C. 998.

In *Mohammud Shafi v. Fatehgar and others*, 1927 Lah. 196 = 100 I. C. 49, it was held that an order on appeal directing the addition of parties to a suit or amendment of a plaint and remanding the suit for retrial is an order upon a point, which is necessarily preliminary to the proper decision and trial of the suit, and the order of remand is therefore under O. 41, r. 23 C. P. C.

An order refunding court-fee when a remand is made can only be passed under s. 13 of the Court-Fees Act in a case where the remand is under O. 41, r. 23. 1927 Lah. 196; *Agent, Bengal Nagpur Ry. v. Behari Lal Dutt*, 1925 Cal. 716 = 52 C. 783. The judgment in *Jadab Gobinda Singh v. Anath Bandhu Sahu*, 37 C. 171 = 51 I. C. 998, is also authority for holding that an order on appeal directing the addition of parties to a suit and remanding the suit for retrial is an order upon a point which is necessarily preliminary to the proper decision, and the trial of the suit.

**Wrong admission of document.**—"A certificate under s. 13 Court-Fees Act should be granted when a suit dismissed on the ground a document relied on is inadmissible, is remanded, as the remand is under O. 41, r. 23. \* \* The trial court dismissed the suit holding that the agreement was inadmissible in evidence for want of registration. The District Judge held that the document was admissible, and remanded the case to the trial court, for decision on the merits; but omitted to pass an order for the refund of the court-fee stamp as required by s. 13 Court-Fees Act. On an application for refund of the court-fee by the appellant, the learned judge held that the remand was not under O. 41, r. 23, and declined to grant the

limitation are made by Imperial Order in Council, or in the Dominions by orders of the Governor in Council. In a second class fall cases in which the Act is not adopted, but, as in New Zealand by Act No. 4 of 1913, similar provisions are prescribed, which permit of the Dominion being treated as if it were a possession to which the Imperial Act extended. Thirdly, if neither condition is fulfilled, it is still possible for privileges to be conferred by Order in Council on works first published in the Dominion in question, or authors resident therein at the time of making their works, in return for protection for works by British subjects not resident in the Dominion. Curiously enough, it was necessary to protect at first both Canada and the Union by such Orders in Council, as both delayed legislation. Canada indeed was extremely slow to move after obtaining freedom, because her printers were adverse to the whole idea of the convention. As an inducement to the Dominion to accept the Convention of 1908 a protocol was signed at Berne on 20 March 1914, which authorized any power to refuse the benefits of the convention to authors being subjects of non-Union states which did not afford adequate protection to works of members of the Union, if such authors were not *bona fide* residents of Union countries.<sup>1</sup> In 1919 and 1920 Bills in Canada raised controversy, and the Canadian Authors' Association was founded to resist the proposals which became law in 1921 (c. 24). Under this Act the whole scheme of the Berlin Convention, which Canada had accepted, was upset by the provision (s. 13) that, if a book were not printed in Canada in sufficient quantities to satisfy the Canadian public, a licence might be given for publication on payment of a royalty, and similarly licences might be given for serial publication of serials. The International Bureau at Berne pointed out convincingly that the proposal contravened the convention, and the Government of Mr. Meighen consented to undertake not to proclaim the Act, but first to secure amendment. The promise was repeated by Mr. King, and kept in June 1923 (c. 10), when the chief Act was amended by applying the licensing sections only to Canadian citizens, exempting from it all other British subjects, and subjects and citizens of countries members of the Union. It is not surprising that the Canadian Authors had no great joy at this provision

<sup>1</sup> *Parl. Pap.*, Cd. 7613.

Act authorising the refund of any court-fee paid on the memorandum of appeal, when the order to make up the deficit has not been complied with by the party and the appeal consequently rejected. *Janak Prasad v. Asharan Prasad*, 6 Pat. 602=105 I. C. 742.

**Court-fees paid under order of court.**—Where as directed by court, the party made a payment of excess court-fee, the appellate court could direct its refund. *Indar Sen v. Rikhai*, 30 A. 103; *Katchi Rowther v. Naina Muhammad*, 28 I. C. 300; *Girish Chandra v. Girish Chandra*, 36 C. W. N. 190. But see *Hitendra Singh v. Maharaja of Darbhanga*, 92 I. C. 626. But the case is different if a party says he made the payment owing to the wrong advice of the stamp reporter. *Jagedish v. Radha*, 6 Pat. 599=105 I. C. 740.

### **Mortgage suits.**

**Appeal against preliminary decree.**—A refund certificate cannot be granted by court in such an appeal as the suit has not been disposed of by the first court. *Nandekumar v. Bilas Ram*, 43 I. C. 555 (Pat.).

**Appeal from the final decree.**—Where an appeal from the preliminary decree was pending "it was not necessary for the mortgagee to file another appeal from the final decree. The court was competent to order the refund of the court-fee paid for the appeal against the final decree." *Swami Dayal v. Muhammad Sher Khan*, 83 I. C. 829 (Oudh); *Kanhaiya Lal v. Tribeni Sahai*, 36 All. 532. As an unqualified pronouncement the observation seems to be rather too wide for a mere variation of the preliminary decree may not necessarily imply the grant of all the modifications sought in a final decree. The position is too obvious to necessitate any further elaboration. See also under Sch. I, Art. 1.

**Cross objections.**—The section speaks only of a memorandum of appeal and does not mention a memorandum of cross objections. Consequently it was held in 1898 Bombay Printed Judgments 72, that no refund of court-fees could be made on a memorandum of cross objections. But in Madras after the amendment of 1922 no such difficulty could arise. So also in Bengal after the amending Act of 1935.

**Application for refund of stamps.**—An application under s. 13 for refund of court-fee is covered by s. 19 cl. (xx) and no court-fee is chargeable on it. *Jag Narain Pandey v. Mata Badal*, 1932 All. 590. See also 9 W. R. 357. But where the application is put in under s. 151, C. P. C. it must be stamped. In Madras applications to the High Court for refund of court-fees paid under a mistake or by misdirection, are exempt from stamp duty *vide* G. O. No. 31 of 1927 dated 5-1-27.

**Original side of the High Court.**—In those High Courts which exercise ordinary original civil jurisdiction, the applicability of the section is doubtful. The original side of the High Court is not a "lower court" within the meaning of the section when an appeal is preferred therefrom and heard by a



## IX

### DIVORCE AND STATUS

THE comparatively minor question of divorce still forms one of the instances in which reservation is required by the royal instructions to the Governors of the Australian States, Newfoundland, and the colonies of Malta and Southern Rhodesia, and control was exercised in this respect long after internal matters as a rule were not a subject of comment. A Victoria Bill of 1860 was not assented to, but was allowed to stand in 1864; <sup>1</sup> New South Wales Bills of 1877 and 1879 similarly failed to become law, but an Act of 1881 (No. 31) was allowed to have effect. A Bill of 1887 was objected to on the score that it was inconvenient to have different divorce laws in different parts of Australia, and that it did not insist on domicile as the test of jurisdiction, thus creating confusion and exposing persons who remarried after divorce to the penalties of bigamy and their children to illegitimacy.<sup>2</sup> In 1889 Victoria introduced new grounds of divorce, including drunkenness, coupled with failure to support, or cruelty, by the husband, or neglect of domestic duties by the wife; desertion for three years; a commuted death sentence or sentence of seven years' penal servitude; murderous assault; repeated adultery by the husband, or within the conjugal residence, or in circumstances of aggravation. Domicile was to subsist for two years before petition, but a deserted wife retained her domicile,<sup>3</sup> and no petition might be brought by persons resorting to the Colony to seek divorce. The Act was assented to after representations had been made by the Australian Agents-General in its support. The Colonial Secretary justified his change of attitude by the view that the Act was passed after an election, where it had figured as an issue; that it was approved generally in Australia; and that domicile was the guiding test of jurisdiction, the specification of two years being explained to mean that genuine domicile

<sup>1</sup> *Parl. Pap.*, H. C. 196, 1894, pp. 8 f.

<sup>2</sup> See *Parl. Pap.*, C. 6006; H. C. 144, 145, 1894; Cd. 1785; New South Wales *Deb.*, xxv. 280, 1079, 1605; Victoria *Deb.*, lxii. 314, 827; Dilke, *Problems of Greater Britain*, ii. 282 ff. For Victoria now cf. No. 3282 (1923).

<sup>3</sup> So also in Tasmania, 1919, No. 65; Western Australia, No. 7 of 1912.

above what is payable on any other application to the court—when the petitioner is successful in whole or in part in his review petition.

**Review.**—Section 144 of the C. P. C. provides that any person considering himself aggrieved

(a) by a decree or order from which appeal is allowed by this Code but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a court of small causes, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

See also O. 47 of the Code.

**Court-fee on review applications.**—Art. 5 of Sch. I of the Act provides that where such a petition is presented before the 90th day of the decree in the suit or appeal in which the judgment is sought to be reviewed, the court-fee payable is "one half of the fee leviable on the plaint or memorandum of appeal" and Art. 4 provides that where it is preferred *on or after* the 90th day the full fee leviable on the plaint or memorandum of appeal should be paid. This section (s. 14) provides that where a review application is made, even beyond the 89th day of the decree till which date alone the concession rate of fee is leviable, and where the court finds that the delay is not due to any laches on the part of the petitioner it may order the excess half of the court-fee stamp paid to be refunded. It is needless to remark this has got nothing to do with the ultimate success or failure of the review application on the merits.

**Computation of the fee**—The 'fee or half the fee' leviable on the plaint or the memo of appeal, the judgment in which is sought to be reviewed, is payable on an application for review irrespective of the relief claimed in the petition. *Husania v. Sahib Nur*, 20 I. C. 3. But see also 50 M. 488 and commentaries under Sch. I, Arts. 4 and 5.

**Computation of time.**—Full fee is leviable when the application is filed *on or after* the 90th day of the judgment.

**Sunday, holiday or vacation**—If the 89th day falls on a Sunday or a holiday when the court is closed, and the application is filed on the first working day after the said holiday, full court-fee is leviable, as s. 4 of the Limitation Act serves only to extend time in instituting or filing cases so that they may not become time barred. It has no connection with this section which relates to court-fees. The Limitation Act is not in *pari materia* with the Court-Fees Act. 9 M. 134. Section 4 of the Limitation Act runs as follows: "Where the period of limitation prescribed for any suit, appeal or application, expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day the court reopens."

1925 equality as to causes of divorce was accorded by law for the benefit of the prairie provinces, which had only the English law of 1857, while the Parliament and the Maritime Provinces and British Columbia had a more generous law : indeed, Nova Scotia, as became its name, by 32 Geo. II, c. 17, gave divorce for desertion, but this, as repugnant to English law, was disapproved and replaced by 1 Geo. III, c. 7. Newfoundland also, like Malta, has lagged behind in divorce legislation by reason of the strong Roman Catholic element in the population.

It is clear that in any territory divorce of non-domiciled persons, if authorized by law, is valid within that territory, but it is also clear that under English law, with the possible exception of the deserted wife, the divorce of non-domiciled persons is a nullity ; the *Harris* divorce bill of Upper Canada was never allowed in 1845 on this score, and the Dominion Parliament usually inserts in Divorce Acts a recital of domicile, which, of course, would not be binding on other jurisdictions, but would doubtless have great weight as to the fact. Domicile is normally insisted on in the Canadian Parliament, save as regards deserted wives ;<sup>1</sup> but, while the Courts of the Colonies have normally accepted the doctrine of domicile as the basis of jurisdiction, there have been exceptions, and the decision in *Le Mesurier v. Le Mesurier*,<sup>2</sup> though practically decisive, was still questioned. But the decision in *Attorney-General for Alberta v. Cook* must be deemed to have disposed of the matter for good ; it is now clear<sup>3</sup> that, unless a statute expressly specifies cases in which domicile is not requisite, jurisdiction must proceed on domicile, with only a possible exception in that the Judicial Committee left it open whether a Court, by

<sup>1</sup> e. g. 62 & 63 Vict. c. 133 ; 9 & 10 Edw. VII. c. 100 ; *Ash* divorce case, *Commons Deb.*, 1887, p. 1022 ; *Stevens v. Fisk*, 8 L. N. 42 ; contrast the *Harris* case, *Parl. Pap.*, H. C. 529, 1864, p. 28. See for New Zealand, *Ryley v. Ryley*, 4 J. R. (N. S.), C. A. 50 ; *Armstrong v. Armstrong*, 11 N. Z. L. R. 201 ; *Poingdestre v. Poingdestre*, 28 N. Z. L. R. 604 ; Victoria, *Hoamie v. Hoamie*, 6 V. L. R. 113 ; Western Australia, *Ripper v. Ripper*, *West Australian*, 2 July 1907 ; Natal (under Law No. 18 of 1891), *Thomas v. Thomas*, 23 N. L. R. 38 ; *Wright v. Wright*, 26 N. L. R. 651 ; *Sandberg v. Sandberg*, 27 N. L. R. 684. For English dicta see *Deek v. Deek*, 2 Sw. & Tr. 90 ; *Armytage v. Armytage* [1898] P. 178 ; Dicey and Keith, *Conflict of Laws* (ed. 4), pp. 889, 896.

<sup>2</sup> [1895] A. C. 517.

<sup>3</sup> (1926) 42 T. L. R. 317 ; cf. *Hastings v. Hastings*, [1922] N. Z. L. R. 273.

the Court authorizing him to receive back from the Collector so much of the fee paid on the [application] as exceeds the fee payable on any other application to such Court under the second schedule to this Act, No. 1, clause (b) or clause (d).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due wholly or in part, to fresh evidence which might have been produced at the original hearing.

#### COMMENTARY.

**Amendments.**—The word “application” was substituted for the original words “plaint or memorandum of appeal” by the Court-Fees Amendment Act XX of 1870.

**Review of judgment.**—O. 47, r. 1, C. P. C. entitles a party to apply for review in the following cases.

1. On the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time the decree was passed,

2. On account of some mistake or error apparent on the face of the record, or

3. For any other sufficient reason.

The policy of the legislature is to put a clog on possible *mala fide* application for review. *Satyakripal Banerji v. Satyabikash Benerji*, 57 I. C. 679 = 1930 Cal. 631.

**Court-fee—amount payable.**—The court-fees on the petition for review is leviable on the value of the entire claim in the suit and not merely on the value of the relief sought for in the review proceedings. *Satyakripal Benerji v. Satyabikash Banerji*, 57 C. 679 = 1930 Cal. 631. But there is conflict of decisions on this point—see under Art. 4 and 5 of Sch. I.

#### Conditions to be fulfilled under this section.

1. The court must reverse or modify its former decision.
2. It must be on the ground of mistake in law or fact.
3. The reversal or modification must not be due wholly or in part to fresh evidence which might have been produced at the original hearing.

A comparison of the provisions of O. 47, r. 1, C. P. C. and this section shows that they do not coincide.

domiciled in the Colony, then their marriage would be held utterly invalid, their children illegitimate; if they were so domiciled, their offspring could not inherit land or a title. Strong representations in favour of recognition were made by the Agents-General in 1896, by the Premiers at the Colonial Conference of 1897; the Commonwealth in 1904 made an appeal, and Lord James of Hereford pleaded for reform on 13 July 1905. It remained, however, for the Liberal Government to yield, and by Act of 1906 to recognize the validity for all purposes of colonial marriages of persons there domiciled, while in 1907 marriage was permitted in the United Kingdom also.<sup>1</sup>

Doubt exists as to the position in England of the offspring of marriages contracted in cases where English law does not recognize the marriage. It is awkward that in certain cases, as in Western Australia<sup>2</sup> and Tasmania,<sup>3</sup> the Acts for the legitimation of children permit such legitimation despite the fact that the parents could not legally have intermarried at the time. This permission, which is contrary to Scottish law and sound morality, has unfortunately found defenders even in England, but has been rejected by the House of Lords from the Legitimacy Bill of 1926.<sup>4</sup>

<sup>1</sup> *Parl. Pap.*, Cd. 2398; *Hansard*, ser. 4, cxlix. 524 ff.; clvii. 316 ff., 1548 ff.; clxxx. 1423 ff.; 6 Edw. VII, c. 30; 7 Edw. VII, c. 47.

<sup>2</sup> No. 44 of 1909, assented to after reservation.

<sup>3</sup> 5 Edw. VII, No. 3. The other Acts followed the Scottish rule, and that of Quebec (Code, ss. 237-9) and of South Africa. But the Canadian provinces are deviating from that rule. For Ceylon, cf. *Rabot v. De Silva*, [1909] A. C. 376, 382. See Dicey and Keith, *Conflict of Laws* (ed. 4), pp. 530 ff.

<sup>4</sup> The Bill to extend the powers of Indian and Crown Colony legislatures to divorce persons domiciled in England and Scotland in 1926 is criticized in Dicey and Keith, *op. cit.*, pp. v, 897 ff. As a war temporary measure English Courts were allowed to divorce persons of Dominion domicile where that was allowed by Dominion legislation (9 & 10 Geo. V, c. 28; Commonwealth, No. 15 of 1919), but these Acts are spent. See now 16 & 17 George V, c. 40; Keith, *J. C. L.* viii. 288; ix. 128.

s. 151 or 152, C. P. C. and could order a refund of court-fee under its inherent power under s. 151 without relying on s. 15 of the Court-Fees Act, *C. T. A. M. Chettiar, v. Ko Yin Byi*, 7 R. 88 = 1929 Rang. 158.

**Delay in application.**—A delay of six months in making the application for refund was considered to be no bar to the relief under this section. *Tej Narain Singh v. Secretary of State for India*, 10 Pat. 649.

Even in cases where s. 15 is inapplicable the court has power to order refund of court fees to meet the ends of justice and to prevent the abuse of the process of the court. *C. T. A. M. Chettiyar Firm v. Ko Yin Byi*, 7 Rang. 88 = 1927 Rang. 158.

### 16 *This section has been repealed.*

It ran as follows: "When any appeal is presented to a Civil Court not against the whole of a decision but only against so much thereof as relates to a portion of the subject-matter of the suit, and on the hearing of such appeal respondent takes under s. 561 of the Code of Civil Procedure an objection to any part of the said decision other than the part appealed against, the Court shall not hear such objection until the respondent shall have paid an additional court-fee which would have been payable had the appeal comprised the part of the decision so objected to".

### COMMENTARY.

This section as it stood provided for the levy of court-fee from the respondent when he took objection to that portion of the decree of the lower court against which no appeal was preferred. This has been repealed by schedule V of the Code of Civil Procedure 1908, as unnecessary in view of the insertion of the word "cross-objection" in Art. I, Sch. I of the Act. Sch. V of the Code has been since repealed by Act XVII of 1914, section 3. This does not result in the restoration of the original provision of the Act, *viz.*, section 18, as it is not expressly enacted so. See section 7 of the General Clauses Act (X of 1897).

The mere repeal of a Repealing Act or the repealing portion of a Repealing Act does not by itself revive the original Act or the repealed portion thereof. 7 M. H. C. App. 8; 6 M. 336.

The section gave rise to a good many difficulties. The use of the words, "The Court shall not hear" was construed to mean that the court-fee can be paid when the appeal was actually ripe for 'hearing' and need not be paid when the cross-objections are preferred. This is now changed by Art. 1, Sch. I and s. 6 of the Act, the court-fee being payable at the time of presentation of the document.

Again another difficulty was the rule of computation. The fee levied was the difference between the fee paid on the appeal memo and that payable on it if it included the subject-matter of the cross objec-

in Canada, Nova Scotia, New Brunswick and Prince Edward Island, the Cape and Victoria, were there any militia or volunteer forces, while most of the cost of defence falling on the Colonies was borne by New South Wales and Victoria, where the gold boom enriched the Colony. The Select Committee of 1861 was greatly aided by Mr. Gladstone in formulating a moderate policy, which insisted on the wisdom of concentrating Imperial forces, the propriety for self-governing Colonies reverting to the old tradition of self-reliance in local defence, and the justice of reducing Imperial expenditure, subject always to due protection from dangers arising from Imperial policy. Finally, on 4 March 1862,<sup>1</sup> on the motion of Mr. A. Mills, the House of Commons resolved

that this House, while it fully recognizes the claims of all portions of the British Empire on Imperial aid against perils arising from the consequences of Imperial policy, is of opinion that Colonies exercising the rights of self-government ought to undertake the main responsibility of providing for their own internal order and security, and ought to assist in their own external defence.

In pursuance of this rule the Duke of Newcastle informed in 1863<sup>2</sup> the Australian Colonies that the Imperial Government must charge £40 for each infantryman up to the number deemed necessary by the Imperial Government, while any additional men must be paid for at the more reasonable rate of £70 a year. But events strengthened the desire to remove rather than have the troops paid for. In New Zealand, Sir G. Grey<sup>3</sup> had decided to entrust native policy to ministers, thus reversing the plan of retention in the Governor's hands, which for lack of funds and executive officers was, he argued, impossible. In fact he probably desired to direct policy by controlling his ministers, while evading Imperial checks on the plea of ministerial advice. Mr. Fox's Ministry, however, was defeated on 26 July 1862 by the casting vote of the Speaker

<sup>1</sup> *Hansard*, ser. 3, clxv. 1032-60.

<sup>2</sup> *Parl. Pap.*, C. 459, pp. 2 f. Cf. Earl Grey, *Colonial Policy*, i. 355 ff., 260 ff. (Canada); Adderley, *Colonial Policy*, pp. 44 f., 380 ff.; Ewart, *Kingdom of Canada*, pp. 169-213; Morris, *Memoir of George Higinbotham*, pp. 204-9; Jebb, *Colonial Nationalism*, pp. 103 ff.

<sup>3</sup> Henderson, *Sir George Grey*, pp. 217 ff.; Collier, pp. 108 ff., 150 ff.; Adderley, *op. cit.*, pp. 146 ff.; *Parl. Pap.*, Aug. 1862; 3 March, June 1864; 2 March 1865; 26 June 1866; C. 83; H. C. 307, 1869.

### Scope of the section.

(1) The section applies only to suits and appeals and not to applications and appeals against orders passed therein. *Upadhyaya Takur v. Periodh Singh*, 23 C. 723; *Dhanpatmal Dewan Chand v. Labb Chand Sardarilal*, 1933 Sind 343.

(2) The object of the section is to levy the proper fee in cases of distinct claims arising out of separate causes of action, with a view to safeguard the revenue while permitting the party to file a single suit for distinct subjects where it does not offend the provisions of the C. P. C. The section is applicable to cumulative reliefs arising out of different causes of action and not to different reliefs based on a single cause of action. *Manohur v. Bawa Ramachandra*, 2 B. 219; *Girdhari Lal v. Ram Lal*, 21 A. 200; *Reference under the Court-Fees Act*, 16 I. C. 401.

(3) The section equally applies even when no cumulative reliefs are asked for, but, only alternative reliefs are sought, provided that they arise out of different causes of action. *Dharum Chand v. Gori Lal*, 47 I. C. 886.

(4) It does not apply to different reliefs arising out of the same cause of action. *Mukhlal v. Ramdeyan*, 44 I. C. 143 (Patna); 1925 Pat. 193.

There is no definition of the word "subjects" in the Act. It has been held to mean cause of action.

Compare the analogous s. 5 of the Stamp Act and the decisions thereunder and under the English Stamp Act. S. 5 provides "Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act."

**Multifarious suits.**— Where there are two or more defendants and two or more causes of action, Order 2, r. 3, C. P. C. provides that the plaintiff may unite in the same suit, causes of action against the same defendants jointly. Joint interest in the questions raised by litigation is a condition precedent to the joinder of several causes of action against several defendants. *Bhagavati Prasad v. Bindishri*, 6 A. 106. If the causes of action alleged are separate and the defendants are arrayed separately or in different sets, the suit is bad for misjoinder of defendants and causes of action, technically multifariousness. *Narasinga Das v. Mangal*, 5. A. 163. There is no provision in the Code of Civil Procedure allowing distinct causes of action that is to say causes of action in which the defendants are not all jointly interested to be united in one suit. *Uma Bai v. Bahu Balwant*, 34 B. 358 = 3 I.C. 165. But this rule has to be read subject to Order 1, r. 3, C. P. C. which provides that all persons may be joined as defendants against whom any right to relief in respect of, or arising out of the same act or transaction, or series of acts or transactions is alleged to exist,



Zealand at being deserted in a struggle against savage natives was ludicrously misplaced; the natives had never more than a few hundred armed men in the field, and the inhabitants were throughout in a position of overwhelming superiority, while the policy of confiscation was popular as providing excellent lands for settlers.

The position of Imperial forces in a Colony did not cause any difficulty in Canada. In 1855 the Crimean war led to the passing of an Act reconstituting the old militia, but in 1862 a more serious measure was defeated, much to the disappointment of military opinion in England, which looked with anxiety to the possibility of difficulties with the United States, brought nearer by the Fenian inroad of 1866. By that time an Act of 1863 had provided for a volunteer militia in addition to the ordinary militia, and in the Red River expedition of 1870 militia forces from Ontario and Quebec served with the Imperial troops. In 1871, however, the Imperial troops disappeared from Canada save at Halifax and Esquimalt, where they remained as Imperial garrisons. On the outbreak of the South African war Canada raised a force to relieve the battalion of the line at Halifax; moreover, in 1902, at the Colonial Conference, and in 1905, it undertook to bear the cost of the garrisons there and at Esquimalt, and in 1906 the garrisons were replaced by Canadian forces.<sup>1</sup> In 1868 on federation the militia was again reorganized, the obligation being continued on all male British subjects between 18 and 60 to be called out for active service within or without Canada whenever it appeared desirable on the score of invasion, war, or insurrection, or danger of any of them. But the real system was purely voluntary and the absence of the Imperial forces led to a decay in military spirit and training, though in 1883 it was provided that the officer commanding the forces, who was given in 1871 the rank of major-general, should always be an Imperial officer. But the device served no very useful purpose, for Imperial officers could not remember that they were, when in Canada, merely Canadian servants, and Lord Dundonald was removed in 1904<sup>2</sup> because he had, in his zeal for reforms and great indignation at the purely political

<sup>1</sup> *Parl. Pap.*, Cd. 2565; *Canadian Annual Review*, 1905, pp. 459 ff.

<sup>2</sup> Skelton, *Sir Wilfrid Laurier*, ii. 198 ff. Dundonald acted foolishly, but the Minister was even less excusable. Cf. Macdonald, *Corr.*, pp. 473-6.

*Achan v. Cheria Parvati*, 72 I. C. 87; *Dawachilaya Pillai v. Pannathal*, 18 M. 459. See also C. R. P. 775/30 (Madras, unreported), *Mothia Maera Moideen v. Muhammad Ismail Rowther*, 1930 M. W. N. 753.

**Allahabad.** "Subject" means "causes of action." *Malchand v. Shreecharam*, 2 A. 676; *Durga Prasad v. Purandar*, 27 A. 186; See also *Chamaili v. Ram Dai*, 1 A. 552; *Chedi Lal v. Kairai Chand*, 2 A. 632; *Purushotan v. Lachman Das*, 9 A. 252; *Reference under the Court-Fees Act*, 16 A. 401; *Hashtanunissa Begam v. Md. Abdul Kareem*, 29 A. 135.

It has also been construed to mean 'kinds of relief.' *Chamili v. Ram Das*, 1 A. 552 F. B.

**Bombay.** See *Fullchand v. Bai Ichha*, 12 Bom. 98; *Hiralal Motichand v. Ganapat Lahanee*, 46 Bom. 142.

**Rangoon.** See *In re P. L. R. M. N. Perchiappa Chetty v. Po Kin*, 4 I. C. 289; *A. W. Zamal v. Cyril Brown*, 36 I. C. 883; *Bank of Bengal v. R. M. L. Muthia Chetty*, 30 I. C. 705.

**Lahore.** See *Fatima v. Mahommad*, 96 P. R. 1895; *Raja and others v. Muttalli and others*, 1926 Lah. 467.

**Nagpur.** See *Dharamchand v. Gorelall*, 47 I.C. 886; *Hirderam v. Ram Charan*, 1924 Nag. 169.

**Calcutta.** See *Kissori Lal Ray v. Sharat Chandra Mozumdar*, 8 C. 593; *Dhakeswar Prasad v. Iswardhari*, 22 C. L. J. 57; *Beni Madhab Sarkar v. Govind Chandra Sarkar*, 32 C. W. N. 669; *Satischandra Ghosh v. Kalidasi*, 26 C. W. N. 177.

**Cause of action.**—There is no definition of this expression in the C. P. C. It means every fact which would be necessary for the plaintiff to prove in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved to entitle the plaintiff to a decree. *Murti v. Bola Ram*, 16 A 165 F. B. It is the bundle of essential facts which it is necessary for the plaintiff to prove before he can succeed in the suit. *Musa v. Manilal*, 29 B. 368; *Raghunath v. Govindnarain*, 22 B. 451.

Where separate suits would not lie for parts of a claim there is only one single cause of action and consequently court-fee on the consolidated amount is sufficient. *E. I. Ry. Co. v. Ahmedi Khan*, 1924 Pat. 596.

**History of the case law on the word 'Subject'.—**There is perhaps no word in this Act that has been so difficult to exactly define as the word 'subject' occurring in s. 17. The earliest reported case on the subject is a decision by four judges of the Allahabad High Court in (1878) 1 All. 552 (F. B.). In that case the plaintiff sued for (1) possession of lands, (2) possession

of an Act allowing the establishment of an Imperial reserve which might be used outside the Colony, at Imperial expense or partly at Imperial and partly at colonial expense, but in either case subject to a special approval of the colonial legislature. In 1901 federation rendered reorganization of the Commonwealth forces possible, and at the Colonial Conference<sup>1</sup> of 1902 Mr. Seddon moved in favour of the principle of the establishment in each Colony of an Imperial reserve for service outside, the limits and conditions of such service and arrangements for pay to be determined by agreement. The proposal was supported by the Cape and Natal, but condemned by Canada and the Commonwealth as contrary to self-government, and, therefore, it fell to the ground, even Mr. Seddon dropping it as far as concerned his Colony. In the Commonwealth, however, under the auspices of the Labour party, legislation was passed in 1903 and 1904 imposing on all male inhabitants the duty of service in the Commonwealth in time of war with the defence forces, the liability extending from 18 to 60 years. Major-General Hutton had, after a stormy period of work in Canada,<sup>2</sup> where he paved the way for the change in 1904 by disagreeing with ministers, returned to Australia to work out a scheme. He fell foul of the Commonwealth Government, and Act No. 14 of 1904 marked the end of the command-in-chief and the substitution of a Council of Defence, with an inspector-general and a military board. In New Zealand in 1906, by Act No. 41, a similar policy of having a Council was adopted, but in 1910 the powers of the Council were handed over to the commandant of the forces. Meanwhile the pressure of external affairs had resulted in the growth of the demand for compulsory service. It was provided for timidly and restricted to those under 21, to the exclusion of voters, in the Commonwealth and the Dominion by Acts No. 15 and No. 28 of 1909, but Lord Kitchener's visit to both in that year led to the determination to proceed further, and Acts No. 37 and No. 21 of 1910 respectively established the principle of compulsory training from age 12 to age 25.<sup>3</sup>

<sup>1</sup> *Ibid.*, Cd. 1299.

<sup>2</sup> *Commons Deb.*, 1900, pp. 594 ff., 2671; *Sess. Pap.*, No. 71.

<sup>3</sup> See *Parl. Pap.*, Cd. 5135, 5582; *Commonwealth Parl. Pap.*, 1910, Nos. 48, 59; *New Zealand Parl. Pap.*, 1910, H. 19 A; 1911, H. 19.

it would arise from the same cause of action as the relief regarding the immoveable and moveable properties. 'Cause of action' is therefore sometimes a wider expression than '*kind of relief*'. The dissenting judge, Sparkie, J., agreed with the narrow interpretation of the words and held that the words "distinct subjects" were not to be read as if they were distinct causes of action.

Of the three meanings (i) distinct causes of action, (ii) distinct kinds of relief and (iii) distinct matters or things, given for the word "distinct subjects", (i) and (ii) mean in practice the same, though occasionally (i) is wider and (iii) is the narrowest as several matters or things, *e. g.*, money, lands, houses, moveables, etc., may be claimed under a single cause of action, and it will be hard to levy fee separately on each of them. Consequently the view that subject means 'cause of action' is the most liberal interpretation, the incidence of charge under it being the least, and it is the interpretation which the majority of judges accepted.

Though the majority of the judges in the above decision held that the expression "distinct subjects" in s. 17 meant distinct causes of action, there still remained some doubt as to the precise scope of its application in all cases, some of the judges, as seen from what is stated above, not having expressed their meaning quite clearly in that case. Two years later, in 1880, in 2 All. 676 (F.B.) the question was again referred to a Full Bench of four judges including Stuart C. J. and Sparkie, J. (the dissenting judge in the former decision), All the four judges unanimously held in this case that "distinct subjects" in s. 17 meant distinct and separate causes of action. Stuart, C. J., who had, of all the judges in 1 All. 552, laid down most clearly that "subject" in s. 17 could only mean cause of action says in the course of his judgment in this case "on the general, question of the construction to be applied to the case, I am not aware that I can express myself more clearly than I did in my judgment in *Chamiah Rani v. Rama Dai*, 1 All. 552. I there stated that the meaning of the words 'distinct subjects' in s. 17 of Act VII of 1870 is shown with sufficient clearness in that section itself, when it states that 'the plaint or memorandum of appeal shall be chargeable with the *aggregate amount* of the fees to which the *plaints or memoranda of appeal in suits embracing separately each of such subjects* would be liable under the Act'. This I think can only mean that the two or more distinct subjects are to be so chargeable as being distinct causes of action . . . and I remain entirely of the same opinion. This s. 17 plainly relates to multifarious suits which are allowable by s. 45 of the Code of Civil Procedure, Act X of 1877, a circumstance which appears to me to supply us at once with the principle by means of which we may solve the difficulty, showing that "distinct subjects" must for the purpose of the Court-Fees Act be distinct and separate claims or causes of action in single and separate suits, but which for the purpose of jurisdiction or the maintenance of procedure may be united in one suit. And this

Commander-in-Chief under his commission, and that his claim to be entitled to place the colonial forces under Imperial control was not one which had any constitutional foundation, the Imperial forces being in the Colony for purposes of defence of Imperial stations, not to put down native risings in the Cape itself.<sup>1</sup> The antagonism of ministers and Governor prevented either side taking a calm view of the facts. In the war of 1899–1902, on the other hand, the colonial forces were put effectively under the control of the Imperial Government and co-operated successfully.

In all these cases the local forces were regulated entirely by local Acts, and directed on principles of ministerial responsibility. The Governor indeed held the position of Commander-in-Chief under his commission—the title in England was dropped in 1793, but has lingered on abroad—but this gave him no authority whatever of a military character. On the other hand, the Acts gave powers sometimes in such a form as to suggest individual responsibility. Thus in 1872 Sir H. Robinson found himself attacked in the Assembly for his action regarding one Rossi, which had been taken on the strength of assurances of the law officers that under Act No. 5 of 1867 he was required to exercise personal responsibility in matters affecting the dismissal of officers. He very sensibly urged alteration of the Act to take away a duty which was not justified. Similarly, Sir B. Frere could rely on various provisions in Cape Acts which were susceptible of being interpreted as giving a discretion to the Governor. These matters, of course, disappeared in the Federation and Union Acts.

The office of Commander-in-Chief was alleged by Sir G. Grey, when in conflict with the Imperial Government in New Zealand, to give him power over Imperial forces as such. This was plainly absurd,<sup>2</sup> and the power which the Governor has in regard to such forces rests simply on the principle enshrined for

<sup>1</sup> Wilmot, *South Africa*, i. 238–61; Molteno, *Sir John Molteno*, ii. 300–401; *Parl. Pap.*, C. 2079, 2144; Cape Act, No. 16 of 1855; No. 5 of 1878, s. 1; No. 7 of 1878, s. 32; Attorney-General for the Cape, *Cape Parl. Pap.*, 1878; A. 4, p. 14. In New South Wales it was held by Sir W. Manning that the Act of 1867 did impose a personal duty on the Governor: Clark, *Austr. Const. Law*, pp. 263 ff.

<sup>2</sup> *Parl. Pap.*, Feb. 1866, p. 259; 1867, pp. 44 ff., 55 ff., 62 ff.; H. C. 307, 1869, pp. 2 ff., 3 ff., 19 ff., 23 ff.

was whether court fees were payable separately on the money and the value of each article separately under s. 17, it was held that there being only one cause of action for the recovery of the money and all the articles, the suit contained only one subject within the meaning of s. 17. The judgment says "It has been ruled by the Full Bench of the court in 2 All. 676 that the meaning of that section is that distinct subjects are to be separately chargeable with court-fees, as being claims or causes of action, which have been united in one suit for the purposes of jurisdiction or convenience of procedure. The claim in this suit does not embrace distinct subjects in the above sense" (p. 133). Now in this case, if "subject" had been taken to refer to the money and each item of article separately, that is, to the various subjects of suits mentioned in s. 7 of the Court-Fees Act and not to the cause of action under which all of them were claimed, the court-fees payable would have been much larger. It would thus be seen that the interpretation of "distinct subjects" in s. 17, as distinct causes of action is the most liberal.

The subsequent Calcutta decision in *Kissory Lal Roy v. Sharut Chandra Majoomdar*, (1882) 8 Cal. 593, is not opposed to this interpretation of s. 17, as that decision was based mainly on long course of practice as regards the particular claims for possession and mesne profits of immoveable property. See notes *ante* under the heading "Possession and mesne profits".

In *Rama Varma Raja v. Kadan*, (1892) 16 Mad. 415, it was held that "distinct subjects" in s. 17 referred to distinct causes of action. In *Daivachilaya Pillai v. Pannathal*, (1894) 18 Mad. 459, a suit by a reversioner for declaration that a series of alienations made by a widow were not binding on him was held to embrace distinct subjects within s. 17 as each alienation created a distinct right vesting in the alienee. In *Neelakandhan Namboodiripad v. Ananthanarayana Pattar*, (1906) 30 Mad. 61, though it was said that the phrase "two or more distinct subjects" may not admit of precise definition applicable to all cases, the court felt called upon to give a meaning to it and held that *the criterion for determining whether a suit contained distinct subjects is whether the different claims in the suit could be made the grounds of separate suits*. This is the same thing as saying that 'distinct subjects' are equivalent to distinct causes of action, since a separate suit can be brought on each cause of action. Even the very close inter-relation of the claims in the suit was deemed no bar to their being distinct subjects within s. 17. The plaintiff's predecessor had executed an Ubhayapattom deed to the defendant, mortgaging property to him and authorizing him to hold it "for ever" paying rent and other dues. Plaintiff's contention was that the terms of the mortgage entitled him to redeem it. He sued (1) to redeem the mortgage, or (2) in the alternative, if the court found that he was not entitled to redeem, then to recover from the defendant, the fees due for a renewal of the mortgage to be taken by the defendant. The court held that the alternative claims came within s. 17. "The claim for ~~is based on the alleged right of the plaintiff as mortgagor,~~

colonies, full legal authority was deficient, though no serious trouble arose, the prerogative of the Crown, even apart from statute, to raise troops being recognized in South Australia in *Napier v. Scholl*.<sup>1</sup> But to obviate future trouble, in 1909-10 court-martial warrants were issued to all the Governors-General and the Governor of New Zealand, giving power to convene and confirm general courts-martial held within the Dominion for offences against the *Army Act*, committed by persons enlisted in the Dominion under that Act, or enlisted under a local Act but serving under the *Army Act*. Further, a Governor could issue a warrant to the senior officer in charge of troops embarked in a Dominion if subject to the *Army Act*, allowing him to convene and confirm district courts-martial, which warrant would cease to have effect on reaching the destination of the troops; for the return voyage the officer commanding at the port of embarkation could issue a like warrant to the officer in charge.<sup>2</sup>

Towards the local forces the attitude of the Imperial Government was essentially advisory. For such ends the Colonial Defence Committee was created in 1885, and led up to the more important Committee of Imperial Defence which came into being in 1901 mainly as the result of Mr. Arthur Balfour's strong interest in defence matters.<sup>3</sup> The body was given a permanent secretariat in 1904, the Colonial Defence Committee falling into the rank of a sub-committee. It did now much important work nominally advisory in character, though the Dardanelles Commission, in its Report of 1917, held that it did more than advise: it decided. This of course referred merely to Imperial affairs; in Dominion questions it was purely advisory. The Canadian Minister of Militia sat on it in 1903, and in 1905-6 it developed a defence scheme for the Commonwealth. Moreover, under its aegis was developed the scheme for a territorial army and an expedi-

<sup>1</sup> 1904 S. A. L. R. 73, 88. For New South Wales see Act No. 12 of 1899; Victoria Acts, Nos. 1619, 1627, 1655, 1698. Cf. also *Williams v. Howarth*, [1905] A. C. 551; *Howarth v. Walker*, 6 S. R. (N. S. W.) 98. An Imperial Commission has, of course, *per se*, no colonial validity; cf. Cd. 2565. The Crown's prerogative is attacked by Art. 46 of the Irish Free State Constitution.

<sup>2</sup> Commonwealth Act No. 15 of 1909, s. 4; New Zealand *Parl. Pap.*, 1910, A. 2, p. 47.

<sup>3</sup> *Parl. Pap.*, Cd. 2200; Cd. 3524, pp. 15 ff.; Hansard, ser. 4, cxxxix. 68, 619; cxlvi. 62; *House of Commons Deb.*, viii. 337, 1382 ff.

favour of the same payee in respect of the sums advanced by the latter to the former on different dates and the payee brings one suit against the maker in respect of his claim upon all the promissory notes, such suit embraces distinct subjects within the meaning of section 17 of the Court-Fees Act. *P. L. R. M. N. Perchiappa Chetty v. Po Kim*, 4 I.C. 289=5 L. B. R. 94 (F. B.) See also 65 M. L. J. 252 cited *infra*. Where the balance of an account has been struck and in settlement of the account, the debtor on one and the same date makes in favour of his creditor several pronotes payable on demand for sums amounting in the aggregate to the balance so found to be due from him and the payee thereafter brings one suit against the maker in respect of his claims upon all the promissory notes, such a suit embraces several distinct subjects within the meaning of section 17 of the Court-Fees Act. *P. L. R. M. N. Perichiappa Chetty v. Po Kim*, 4 I. C. 289.

Where several persons have executed separate promissory notes and mortgages to the plaintiffs as security for the sums advanced by him to the principal debtor, a suit by the plaintiff against the principal debtor and the sureties falls under this section. *Bank of Bengal v. Muthia*, 30 I. C. 705 F.B.

(c) *Suit on different transactions*.—Suit for different sums payable in respect of different transactions on different dates and appearing in different accounts, *Ramachandra v. Appaji*, Bom. P. J. 1887 p, 271, but not in respect of one continuous transaction, 46 B. 142.

(d) *Suit for partition and possession*.—The view obtaining in Patna being that where a plaintiff is not in possession and sues for partition of property, he should pray for both as he will be entitled to partition only if he is in joint possession and when he prays for both he must pay court-fee for both the reliefs sought. *Sitbaran Jha Panday v. Lokenath Missir*, 3 Pat 618=1924 Pat. 558. See commentary under s. 7 cl. iv (b).

(e) *Suit for partition and account*.—Where a prior division in status had taken place in a joint Hindu family and the members had therefore become tenants-in-common, a prayer for accounts in a suit for partition is liable to separate court-fee under s. 7 cl. iv (f) of the Court-Fees Act, in addition to the fee payable under Art. 17 of Sch. II of the Act, for the claim for partition. *Manikkam Pillai v. Murugesam Pillai*, 37 L. W. 748=64 M. L. J. 576=1933 Mad. 431. But the position is different when the family is joint and no disruption has taken place and the suit is by a co-parcener and not by a tenant-in-common. A *karta* of a joint Hindu family is not responsible to the other members of the family for the management of the joint family property in respect of the income derived therefrom, and, therefore, is not liable to render accounts. The only account the *karta* is liable for in a suit for partition is as to the existing state of the property devisable. The parties have no right to look back and claim relief against the past inequality of enjoyment of the



ference<sup>1</sup> of 1911, which was supplemented by expert discussions at the War Office, showed progress; it was agreed to assimilate promotion examinations in the Dominions and the United Kingdom, and the principle of securing courses of instruction in the United Kingdom and India and attachment to the Staff Colleges at Camberley and Quetta for Dominion officers was accepted. It was also agreed that the Dominions should be able to requisition the services of the Inspector-General of the Oversea Forces, a new office held in conjunction with the Commandership-in-Chief in the Mediterranean,<sup>2</sup> and in pursuance of this resolution Sir Ian Hamilton visited Canada in 1913 and the Commonwealth and New Zealand in 1914, presenting elaborate reports on the forces of these Dominions to their Governments for such action as they might think fit. On 1 April 1912 a Dominion section of the Imperial General Staff appeared at the War Office, to which Canada and Australia supplied officers. In June 1911 the Military College of the Commonwealth was opened at Duntroon, training thirty cadets yearly for four years, with further training in England or India, New Zealand cadets being also eligible for admission. In the same year a Railway Council for war purposes was created, and in 1912 the Council of Defence was remodelled and organization revised to assimilate it to the British model. South Africa created, in 1913, a South Africa Military College and a Council of Defence with undefined functions, the Commandant-General having wide authority.

Before the War the cadet movement, voluntary in Canada, but compulsory in Australia and New Zealand, where junior cadets received practically physical training from 12-14, senior cadets real military training from 14-18, was making great progress, and in the two latter Dominions compulsory training was being steadily introduced, while in the Union Act compulsion was proving needless, as the fifty per cent. basis of training, which alone was contemplated, was proving to be easily met by voluntary enlistments. In December 1913 the Commonwealth forces were 2,468 permanent, 45,915 active citizen forces; in 1914 in New Zealand 578 and 25,902; in 1913 in Canada, out of a nominal 74,606 of all ranks 57,527 received some training, mostly inadequate: there were 48,000 members of rifle

<sup>1</sup> *Parl. Pap.*, Cd. 5746-2, pp. 3 ff.

<sup>2</sup> *Ibid.*, Cd. 5019, 5598.

ment introduced a fresh cause of action extraneous to the old and so the plaintiff should pay fresh additional court-fee on the claim. *Pethi Reddiar v. Chidambara Reddiar*, 1931 Mad. 533. (43 I. C. 560 diss. from). It is submitted that this decision may well be re-considered in view of the fact that though the causes of action may be different, the relief sought is the same *viz.*, recovery of the amount alleged to be due to the plaintiff.

(h) *Suit regarding several alienations.*—When reversioners sue to have declared invalid as against them several alienations made by a Hindu widow, a court-fee of Rs. 10, must be paid in respect of each of the alienations in question. *Daivachallaya Pillai v. Ponnammal*, 18 M. 459. But where the sons sued for a declaration that certain mortgage with possession executed by their father and a deed of further charge on the same property subsequently executed by him, were not for necessity and did not affect their reversionary interest, it was held that the subject of the suit was the alienation of ancestral property and that it constituted only one cause of action and not two and that only Rs. 20 was payable under Sch. II, Art. 22 (Punjab). *Suba Singh v. Bela Singh*, 142 I. C. 641=1933 Lah. 382. Where in a suit by a reversionary heir the plaintiff challenged certain alienations made by the last male holder, and the suit was afterwards converted into one for possession of properties with the leave of the court on the plaintiff obtaining a surrender from the widow, it was held that a separate court-fee was necessary for the declaratory relief regarding the alienations. It was doubted whether the plaintiff claiming through the person who made the alienations was not bound to get them set aside but as the question was not raised, the court did not go into the question. *Ramakrishnayya v. Seshamma*, 68 M. L. J. 369.

(i) *Suit for declaration regarding adoption and wills.*—A suit for declaration that an adoption made by a deceased person is invalid, and that two wills executed by a deceased on different dates are also invalid, is governed by Art. 17-A (iii) of Sch. II as regards the adoption and by Art. 17-A (i) as regards each of the wills and a separate court fee is payable in respect of each relief, though the property dealt with by both the wills is the same. *Veeramma v. Venkatarasamma*, 68 M. L. J. 280=41 L.W. 452=1935 Mad. 313.

(j) *Suit for recovery of properties and cancellation of document.*—In a suit by a Hindu against his brother for recovery of his share of certain properties got by him both by inheritance and bequest and for cancelling a gift in favour of the nephew the fee chargeable is the aggregate amount leviable under the Act in respect of the several claims. *Mul Chand v. Shih Charan Lal*, 2 A. 676.

(k) *Suit for specific performance.*—Where a suit is brought for specific performance of a contract of sale or in the alternative for the enforcement of a right of pre-emption of a mortgage right thereon, they constitute distinct subjects and the section is applicable as both the subjects and the causes of action are different. *Hashmatunnessa v.*

produced immediate offers of aid. Canada<sup>1</sup> hesitated for the moment; Sir W. Laurier doubted if the matter was not one for Parliament to decide, though on 31 July the House of Commons had expressed sympathy with the efforts of the Imperial Government to secure equal rights and liberties for British subjects in South Africa, but Sir C. Tupper, as leader of the opposition, pressed him to send troops; public opinion was strongly in favour, and on 30 October the 2nd Battalion of the Royal Canadian Regiment, 1,150 strong, embarked. Further troops were sent, both of the permanent forces and newly raised in 1900, while Australia and New Zealand showed no less eagerness; Canada supplied in all 8,400 men, including a garrison to replace the British at Halifax; Australia about 16,000, of which New South Wales sent 6,208; New Zealand 6,000; and South Africa, directly affected, 52,000. The control of these forces was Imperial throughout; the cost was divided between the two Governments, the Colonies bearing transport costs and making up the pay of their men.

The precedent set in 1899 rendered it inevitable that, when war was so obviously forced on the Imperial Government as in 1914, there should be an immediate response from the Dominions.<sup>2</sup> Canada offered at once 20,000 and immediately raised the offer to 33,000 men, and undertook the work of raising these forces, which by July 1916 amounted to four divisions, a cavalry brigade, and considerable bodies of forestry and railway men. Training was concentrated in England, where, after the resignation of Sir Sam Hughes, a Minister for Militia Overseas was stationed, the work first being carried out by Sir G. Perley, then from October 1917 by Sir E. Kemp. The supreme command of the Canadian forces, at first exercised by Imperial officers, was given, on Sir Julian Byng's promotion after the battle of Vimy in 1917, to Sir A. Currie, who had attained by merit the post of commander of a division. Promotion from the ranks soon replaced nomination for commissions. The enlistments were made, it seems, under the *Army Act*, in

<sup>1</sup> The ambiguities of the position appear clearly from Skelton, *Sir Wilfrid Laurier*, ii. 91 ff.

<sup>2</sup> Keith, *War Government of the Dominions*, pp. 75-111. These are official histories for the Dominions. For Lord de Villiers' legal doubts as to procedure in Aug.-Sept. 1914, see Walker, pp. 500 ff.

mesne profits shall be deemed to be distinct causes of action. This I think implies that a claim for possession and mesne profits when joined in one suit would but for the last section be considered as one cause of action."

Allahabad. In *Chamaili Rani v Ram Devi*, 1 All. 552 (F. B.) and *Chedi Lal v. Kirat Chand*, 2 All. 682 (F.B.), it was held that the *claims were distinct causes of action* and therefore distinct subjects within the meaning of S. 17 of the Court-Fees Act. But in *Reference under Court-fees Act* S. 5, 16 All. 401, it was held that *there was only one cause of action* and that there was therefore only one subject under S. 17 in the suit. "Now on the authorities in this court, I think I may hold that the terms *"two or more distinct subjects"* in section 17 of the Court fees Act are equivalent to two or more distinct causes of action that section 17 refers to multifarious suits, and that it is applicable to suits in which two or more distinct causes of action have been joined under section 45 of the Code of Civil Procedure..... The question which I have to decide is does section 17 of the Court-fees Act apply to a suit for possession of immoveable property, to which is added a claim for mesne profits accrued due in respect of that property? Is such a suit to be considered a multifarious suit? My answer is in the negative. Taking the instance of the present suit, I find it is one by a legatee suing under the will of the testator to recover property bequeathed to her by the will. His cause of action is the bequest in the will, coupled with the defendant's refusal to surrender possession and to repay the profits which he has wrongfully received from the estate. *In such a suit there is one and only one cause of action, not only for the immoveable property but also, for the mesne profits which latter I hold to be a claim flowing from the one cause of action, just as much as a claim for each individual portion of the immoveable property would be.* I am therefore not obliged by statute to hold that a claim for mesne profits is a cause of action distinct from that for the recovery of the land to which it relates. As to Section 44 (a) of the Code of Civil Procedure, I do not think it is in point, as it does no more than provide an exception to the general rule laid down in the main section. *I do not consider it to be an authority for holding that a claim for mesne profits is a cause of action separate and distinct from the cause of action for the recovery of the immoveable property to which the mesne profits relate.* For the above reasons, and also bearing in mind the weighty consideration set forth in the Full Bench judgment of the Calcutta High Court mentioned above, *I hold that the claim for the mesne profits in the case before me takes its origin in and flows from the same cause of action as that for the recovery of the immoveable property. The suit is not a multifarious one and is therefore not one to which section 17 of the Court-fees Act applies.* The fee paid by the applicant is sufficient". The italics are made now. It will also be seen from the above that the practice in the Allahabad Court in ~~this matter~~ has been varying.

volunteer, M. Bourassa denouncing the forging of 'a militarism unparalleled in any civilized country, a depraved and undisciplined soldiery, an armed rowdyism, without faith or law, and as refractory to the influence of individual honour as to that of their officers'. Men were urgently needed for agriculture, while munition orders absorbed 200,000. In May 1917 Sir R. Borden returned from the Imperial War Cabinet, convinced that conscription was necessary; the United States had come into the War and adopted the selective draft; there was less temptation to seek refuge in America from compulsion, and a treaty, which did not, however, become operative until 30 July 1918, was in preparation to secure application of compulsion to British subjects in the United States and vice versa. In Quebec 6,979 men only had enlisted, while the English-speaking population, not a quarter as numerous, had supplied 22,000 and French outside Quebec, a sixth in number of those in the province, 5,904; total enlistments were only some 400,000. The application of conscription was demanded by a strong section of Liberal opinion under Mr. Rowell, leading to the formation of the Coalition Government of 12 October 1917, while it was opposed by Sir W. Laurier on behalf of Quebec. He suggested a referendum, but this was defeated by 111 votes to 62, and the Bill became law, a proclamation to call up the first class being issued on 13 October 1917. The Act contemplated merely the raising of 100,000 men by compulsory enlistment, from age 20 to 45, the first class including those over 20 and not born before 1883. Exemptions included aliens by birth who still retained their old enemy nationality; and enemy aliens and aliens whose mother tongue was German, who had been naturalized since 1902, were by the *War Time Elections Act* disqualified for the franchise. The same Act and the *Military Voters Act* gave the vote to women connected with those of military service and to all engaged, males and females, in war work for Canada. By these changes of the franchise the Government which dissolved Parliament succeeded in winning an appeal to the people, so that serious enforcement of the Act could be contemplated. But the process of enforcement was slow, and the exceptions allowed far too numerous; occupation, educational continuity, training, health, exceptional financial or family circumstances, religious belief as regards combatant

*distinct subjects within section 17 if they can be made the grounds of separate suits.* However, the court, did not think it necessary to answer the above query as it based its conclusion on long course of practice *alone*. Of course a long course of practice if uniform should not be lightly upset. See the observations of the Privy Council in the of quoted *Phulkumari Dasi's* case, 35 C. 202. When the decision in 54 M. 1 is based on practice and practice *alone*, it has to be taken that the observations regarding 'subject' are obiter. Regarding uniformity there seems however to be no such invariable practice in all the High Courts. In Bombay claims for possession and mesne profits are distinct subjects. In Allahabad the practice has not been uniform. The Allahabad and Rangoon High Courts take such a suit as containing a single subject within the meaning of s. 17 because according to them the two claims constitute only one cause of action. It is unfortunate that the decision in 54 Mad. 1 was given *ex-parte*, neither the Government Pleader nor the other side having appeared to contest the matter.

This F. B. decision has also been recently referred to in *The Rajah of Vizianagaram v. "The Government" represented by the Government Pleader*, 63 M. L. J. 73. Anantakrishna Iyer, J., observes thus "It should be noticed that the words used in section 17 are 'two or more *distinct subjects*' and not 'two or more *distinct causes of action*.' The distinction is important because in *Ponnammal v. Ramamirdu Iyer*, 38 M. 829, a Full Bench of the court has held, that a claim for possession and a claim for mesne profits are *separate causes of action* and separate suits are maintainable in respect of the same, and that the bar of O. II, r. 2, C.P.C. would not apply to such cases. That was a ruling on the C. P. C. O. II, r. 2. Recently a Full Bench of this Court has considered this question *Parameswara Pattar, In re*, 54 M. 1." His Lordship further observed "I do not prefer to go into the several decisions cited before me which refer to causes of action, and suits based on different causes of action since, after the decision in 54 M. 1 those considerations are not conclusive in considering whether a particular suit embraces 'distinct subjects' within the meaning of section 17 of the Act."

(q) *Suit by unsuccessful claimant.* In a regular suit filed by an unsuccessful claimant under Order XXI, Rule 63, C. P. C. impleading both the judgment-debtor and the decree-holder in the suit, praying as against the one a declaration of his title to the attached property and as against the decree-holder a declaration that the property is not liable to be attached in execution of the decree, two substantial reliefs are prayed for, *Moti Singh v. Kausilla*, 16 A. 308 (F.B.). The causes of action in this case are the attachment and the adverse order passed in claim proceedings.

Where a claimant whose objection under section 278 of the Civil Procedure Code (Order XXI, R. 58) has been disallowed brings a suit and makes a judgment-creditor who was trying to execute the decree, the sole defendant to a suit, a claim for a declaration that the property

action taken, and that the *Military Service Act* expressly disclaimed any interference with the powers of the Governor in Council under the *War Measures Act*; stress was laid also on the fact that Parliament had approved the Order. Even so a Quebec judge could still be found on 6 August to refuse to follow the Supreme Court, on the plea that Canada could not repeal *habeas corpus*: small wonder that Quebec judgements rank low in the scale of intelligence. None the less it may be admitted that the Act was a fiasco;<sup>1</sup> up to the Armistice it had raised only 83,355 men, and Canada's war work was done by the 465,984 voluntary enlistments. At the Armistice the total of the army corps was only 110,600, but it was much stronger than the average British force, with its four full divisions, each containing four battalion brigades. In this regard Canada showed her autonomous position in all but essentials of employment. When it was desired by the Imperial command to convert the Canadian forces into two corps, each of three divisions, the fifth division being brought over from England, and by withdrawing a battalion from each brigade a sixth division being formed, General Currie protested so effectively that he was left with his powerful corps, a fact which accounts in part for the brilliance of its performance in the final attacks. Earlier also the wishes of Canada had prevailed against breaking up the corps and dispatching part of it to Italy, while when, after the disaster of 21 March, the corps was being broken up by its divisions being separated, General Currie was able to secure its reconsolidation with all that that entailed of *esprit de corps*. In addition to the corps, a Canadian cavalry brigade fought independently; Canadian airmen were always a part of the Imperial air arm; there were railway units and a forestry corps, making in all some 38,000 or 39,000 not under the corps commandant. Canadian garrisons held Bermuda and St. Lucia, artillery served in North Russia, an expeditionary force in Siberia, railway men in Palestine, and a few picked men in Mesopotamia with the 'Dunster force'. The total enlistments in the Canadian forces to the Armistice were given as 590,572, excluding some 15,000 British and allied reservists; 418,000 went overseas; about 51,000 were killed, and nearly 150,000 were wounded.

In Newfoundland the lack of military organization of any

<sup>1</sup> Cf. Skelton, *op. cit.*, ii. 544 ff.

In the 35 Cal. case the plaintiff was in possession of the property in respect of which he sought the declaration but in a later case that arose at Madras, *Yellama Raju v. Goteti Vigneswaradu*, 110 I.C. 554 the plaintiff sought both a declaration and possession. The dispossession in the case arose after the cause of action for declaration, *viz.*, dismissal of the claim petition accrued. It was held that Order II, R. 2, C. P. C., was directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action different causes of action even though they arise from the same transaction. See *Ponnamal v. Ramanatha Iyer*, 38 M. 829. The plaintiff could not have sued on the ground that an adverse order had been made against him on his claim petition; for that purpose it would have been necessary for him to allege a further cause of action, *viz.*, his subsequent dispossession of sale in execution proceedings.

(r) *Suit on several mortgages.*—In view of the recent amendment to the Transfer of Property Act by the insertion of the new section 67-A therein a detailed discussion as to whether a mortgagee holding several mortgages over the same property executed by the same mortgagor can file separate suits becomes unnecessary. Section 67-A provides that the mortgagee is bound to sue on all the mortgages in respect of which the mortgage money has become due. But the principle of consolidation applied by s. 67-A of the T. P. Act has no bearing upon the interpretation of s. 17 of the Court-Fees Act, and a suit based on two different mortgages consists of two distinct subjects under s. 17. *Pollachi Government Bank, Ltd. v. Krishna Ayyar*, 41 L. W. 327 = 68 M. L. J. 316 = 1935 Mad. 262. In the case of a suit by a mortgagor for redemption of several mortgages executed in favour of the same person, there is no difficulty and s. 17 is clearly applicable as he can sue to redeem them separately or simultaneously under s. 61 of the Transfer of Property Act.

(s) *Where specific objection is taken to costs in appeal.* Where in an appeal, relief is sought against a decree for costs independently of the result of the main contest in the suit, fee is payable in the appellate court on both the reliefs. *Rowlins v. Lachmi Narain*, 44 I. C. 50 = 1918 Pat. 264. See also under Sch. I, Art. 1.

(t) A suit where on the basis of two pronotes two different amounts are claimed, one above and the other below Rs. 500, embraces distinct subjects and court-fee is payable on the former under Art. 1 and on the latter under Art. 2 of Sch. I of the Madras Court-Fees Amendment Act of 1922. *Secretary of State for India v. Ayyasami Chettiar*, 65 M. L. J. 252 = 1933 Mad. 178. This decision it is submitted, is opposed to the principle of the decision in 3 All. 108 (F. B.) followed in 29 Cal. 140.

(u) Where 73 persons filed a suit in which they prayed for a declaration that each plaintiff had a raiyati-joti interest in one out of 73 plots of land and for a declaration that a compromise decree was



have disallowed the regulation. On the other hand, if a referendum pronounced for the plan of compulsion, the Senate might be expected to accept it. The result on 28 October was disastrous ; New South Wales, South Australia, and Queensland went against the proposal, and the total for was only 1,087,557 to 1,160,033 against. Labour was divided ; farmers voted against interference with their crops and high profits ; women preferred to keep their relatives at home in safety and prosperity ; it was alleged that Australia was doing harder fighting than England—a ludicrous allegation ; Indians were advocated as more suitable to be used in war—a plea which came strangely from Europeans who had once ridiculed the idea of sheltering themselves behind men of colour ; those who volunteered would find their places filled by cheap alien labour. The Industrial Workers of the World commenced its evil propaganda, the New South Wales Labour party expelled the Prime Minister who once was its chief ornament. Something must be granted to the malcontents ; the trick of calling up the men for training before the result of the referendum was annoyance and prejudice ; the Prime Minister quarrelled on minor points with three of his colleagues, who resigned as a protest against his securing a meeting of the Executive Council behind their back ; and, by failing to say that he would resign if the referendum failed, he gave the impression of insincerity. The defeat of the referendum led to manœuvres by the Prime Minister which, as has been seen, resulted in the final return to office of a coalition Ministry in which the Liberals were the mainstay, strengthened by the result of an appeal to the people on 5 May 1917, but under definite pledge not to introduce conscription by its parliamentary majority. Power had been obtained at the sacrifice of principle. The Italian *débacle* induced Sir W. Irvine<sup>1</sup> to appeal to the Ministry to risk its comfortable position in an appeal to the country by a dissolution for power to act, but this high courage was not shared by Mr. Hughes. He resolved to try another referendum under the *War Precautions Act*, 1914–16. The proposal submitted was reduced almost to ludicrous simplicity ; voluntary recruitment was to go on, balloting being used to make the numbers up to 7,000 a month ; those liable were only to be unmarried men, widowers without

<sup>1</sup> Cf. *Parl. Deb.*, 25 Jan. 1918, p. 3555.

the meaning of the word "subject" in s. 17 but was based *only on the long and universal practice prevalent in the whole country* as regards the levy of court-fees for the two claims in a suit, as shown by the decisions in 4 Pat. L. J. 195, 8 Cal. 593, and 16 All. 401. Their Lordships distinctly observe: "We should *only* be guided by the long course of practice". That decision therefore, the facts of which are quite different, is, it is submitted, not applicable here. It may also be noted that that decision was *ex-parte*.

Further s. 17 cannot be dismissed as inapplicable on the ground that the word "subject" is not defined in the Act and that it is therefore of doubtful import. Although the word 'subject' in s. 17 has not been defined in the Act, courts have of necessity to explain it in deciding cases coming before them, and have to give effect to s. 17 as best as they may. Else there would be a practical abrogation of the section. All the High Courts have in practice held "subject" in the section to mean cause of action. The decisions on the point are numerous beginning from 1878, only eight years after the passing of the Court-Fees Act. In Madras the earliest decision is that in *Raja v. Kadar*, (1892) 16 M. 415 (418). Then comes *Dairachilaya Pillai v. Pannathal*, (1894) 18 M. 459. In *Neelakandam Nambudripad v. Ananthanarayana Pattar*, (1906) 30 M. 61, though it was said the word "subject" might not admit of a precise definition applicable to all cases, the court felt called upon to explain it, and it was laid down that the criterion for determining whether a suit contained distinct subjects is whether the different claims in the suit could be made the grounds of separate suits, that is, since a separate suit can be brought on each cause of action, whether there are different causes of action combined in the suit (p. 64, last paragraph). Then there are the decisions in 1930 M. W. N. 758, *Ramaswami Chettiar v. Ramaswami Chettiar*, 61 M. L. J. 680, and C. R. P. 775/1930 (unreported), in all of which it has been laid down that if Order II, Rule 2 C. P. C. is no bar to separate suits being brought on the different claims in the suit, s. 17 would apply, and the last two of which were subsequent to 54 Mad. 1 on which the decision under reference is based. Thus, from shortly after the passing of the Court-Fees Act, courts have for a long period taken "subject" as meaning cause of action. "Where a statute uses language of doubtful import what has been done under it for a long term of years may well give an interpretation, reducing uncertainty to a fixed rule." *Vide* Broom's Legal Maxims, 9th Edn., p. 442.

Again the existence of common grounds for the several claims in a suit cannot prevent the suit from coming within the operation of s. 17. In a suit between the landlord on one side and several tenants on the other, the tenants join as plaintiffs or are joined as defendants in it under O. 1 Rr. 1 and 3 or O. 2, r. 3 or under special enactments, because common questions of law or fact arise with regard to them, or because they are jointly interested in the causes of action. To say that s. 17 can apply only if there is

peace, admitted that it was not prepared to fight until victory was secured, urged the imitation of the Russian revolution, and the opening of a peace conference. Further co-operation in recruiting was declined, unless the Allies at once agreed to peace without annexations or indemnities, and even so priority was to be given to the defence of Australia—which was in no danger from any one except Labour revolutionaries, who boasted that they would have rebelled in 1917 if conscription had been carried. A new military policy was enunciated, abolishing all compulsion below the age of 21; distinctions between commissioned and non-commissioned officers, oaths, salutes, and needless discipline; and requiring that men on being trained should be allowed to keep their arms. Labour ceased now to take part in recruiting, and nothing save the close of the war prevented Australia from having to confess that she could not continue to play her part and must fall behind the other Dominions. It is regrettably true that disloyalty and hostility to the Empire appeared far more clearly and in a much more dangerous form in the Commonwealth than in any other part of the Empire.

The services of the actual forces, on the other hand, were of special merit; the defects of the Australians were want of discipline, partly induced by their lack of severe penalties, which somewhat complicated the task of keeping order among them; their energy and initiative, on the other hand, were most praiseworthy. Moreover, the fortitude shown by the troops and people in the matter of the failure at Gallipoli was worthy of every praise. Australians not merely served with great success on the western front, but they supplied an air squadron for Mesopotamia, some men for the 'Dunster force', won fame at Sinai and in Palestine, and at the beginning of the war seized German New Guinea, which was retained under mandate under the terms of peace. Total enlistments amounted to 416,809, 332,000 went overseas, 59,000 were killed or died, and the total casualties exceeded 318,000. No doubt the fact that the force was volunteer explains the very high rate of losses, but there was unquestionably a needless strain placed on the troops towards the end for want of reinforcements. The men enlisted were taken under the *Defence Act*, which applied to them overseas the *Army Act* subject to certain changes,

to hold that such application can be made on a court-fee of Rs. 20 only, for each tenant claims a separate relief against the landlord. If in a case like that, each application is to be valued and stamped according to the relief sought by each tenant, there is no reason why a different mode of calculation of court-fee should be adopted in a case where a landlord brings a similar suit against a number of tenants". It is submitted this reasoning is equally applicable to a suit under s. 193 of the Madras Estates Land Act. If under that section a number of tenants in a village join together to bring a suit against the landlord for reduction of rent, "it would be unreasonable to hold" that a single court-fee alone need be paid in it by the several plaintiffs together; and therefore in the converse case of suit by the landlord, a different mode of calculation of court-fee cannot be adopted. Thus it is clear that simply because the statute allows one suit to be brought under certain circumstances, it cannot be concluded that a single court-fee alone need be paid. Under s. 67A of the Transfer of Property Act, a mortgagee is bound (not allowed as in the case under reference under the Estates Land Act) to sue on all the mortgages in respect of which the mortgage money has become due. But yet the Madras High Court has held recently that the principle of consolidation applied by that section has no bearing upon the interpretation of s. 17 of the Court-Fees Act and a suit based on two different mortgages consists of two distinct subjects under s. 17. See *Pollachi Town Bank Ltd. v. Krishna Ayyer*, 68 M. L. J. 316. In *Khasi Prasad Singh v. Secretary of State*, 29 Cal. 140, where the appellants sought to consolidate appeals arising out of 44 Land Acquisition references and pay a single court-fee on the aggregate value of all the appeals together, it was held that, having regard to the fact that the parties were the same in all the cases and that the plots of land were contiguous to one another and formed part of one estate although in the occupation of different tenants, the appeals might be consolidated into a single appeal, subject however to the payment of court fees separately under s. 17 on the value of each of the appeals. It would be profitable in this connection to see how the analogous expression "distinct matters" in s. 5 of the Indian Stamp Act which has not been defined at all in that Act, has been interpreted and applied in judicial decisions. In *Reference under the Stamp Act*, 24 Mad. 176 (F. B.) a company having obtained from the Government, the right to search for and work for minerals in a certain district, prepared an agreement to be executed for that purpose by the several landholders in that district. The agreement provided that in consideration of the executants granting to the company the right to prospect for and mine minerals in their lands, each of them should be paid a royalty of one rupee and a varying royalty or rent (specimens of which were set out). The other terms were common to all the executants such as that they should not sell the mining rights to any other persons for fifty years and should indemnify the company from claims made by other persons and so forth. It was held that the instrument dealt with several

seas ; there were about 17,000 deaths and 58,000 total casualties. The proportional strain was much greater than in the case of Canada or even of Australia, and at the close the New Zealand force was in excellent strength and heart.

In the case of the Union of South Africa immediate aid was accorded to the Imperial Government by the Union undertaking the duties hitherto performed by the Imperial forces in South Africa, only a few units being left there. Then the energies of the Government were absorbed in the work of invading German South-West Africa,<sup>1</sup> which was hindered by the serious rebellion which called forth all the resources and ability of Generals Botha and Smuts. When these episodes had been cleared away, the Union Government gladly assisted in recruiting forces which were to be paid for by the Imperial Government. Later in 1915 it sent men on request to East and Central Africa for service against the Germans, later paying part of the cost. In January 1916 it permitted General Smuts to undertake his successful campaign to dispose of the Germans in East Africa, which was complete by the end of 1916. Useful work was done in Egypt and Palestine by the South African Field Artillery and the Cape corps of coloured men. The necessary reinforcements were sent regularly to keep up the Expeditionary Force on the western front, which from 1 January 1917 was paid at Union rates by the Imperial Government, the Union giving a grant of £1,000,000 in discharge of its obligation, a concession to Nationalist feeling. 30,719 troops served in Europe or Egypt, as well as 1,925 coloured labour unit and 25,111 native labour contingents ; 43,477 in East and Central Africa with 16,845 labourers ; 67,237 in South-West Africa and 33,546 labourers. Casualties totalled 18,528 with 6,592 deaths. The Expeditionary Forces served under the *Army Act*.

The contributions of the Dominions were large and important, but relatively to the United Kingdom they were small. One calculation indicates that the percentage of men who served in the forces was in the United Kingdom, less Ireland, 27·28, with 10·91 per cent. of the male population casualties ; in Canada the figures were 13·48 and 6·04 ; in Australia 13·43 and 8·50 ; in New Zealand 19·35 and 9·80 ; and in South Africa 11·12 and 2·7, of white male population. The figures, moreover, are unjust

<sup>1</sup> Keith, *War Government of the Dominions*, pp. 112 ff.

(i) Where the plaintiff sued for khas possession of his Zerait lands against several persons holding the same, it was held that the suit was based upon a single right and the court-fee was payable upon a single cause of action. *Ram Narain Gir v. Gouri Shanker Lal*, 7 Pat. 402=110 I. C. 191=1 28 Pat. 274.

(j) *Appeal in suit for pre-emption.* In a pre-emption suit, where the vendee appealed against the pre-emption decree granted to plaintiff and denied the right to pre-empt and also that the consideration decreed to be paid to him is inadequate, it was held that there were two alternative reliefs based on exactly the same cause of action, and as only one of them could be granted, they did not constitute two distinct subjects within the meaning of section 17 and the correct court-fee is one calculated not on the aggregate of the two values but on the higher of the two. *Tekchand v. Tara Chand*, 5 L. 114=85 I.C. 556=1924 Lah. 494.

(k) *Suit for redemption.* Where the plaintiff seeks to redeem a usufructuary mortgage the court-fee is payable on the principal amount exclusive of any surplus profits realised by the mortgagee and claimed in the suit. Section 17 relates only to a suit which embraces two or more distinct subjects and does not apply to such a case. *Gopikisan v. Sarabji*, 1922 Nag. 259; *Pothanna v. Satyanandacharlu*, 60 M. L. J. 698.

(l) *Suit for declaration and injunction.* It falls under s. 7 (4) (c) and is outside s. 17 of the Act. *In the matter of Kalipada Mukharjee*, 1930 Cal. 686.

(m) Where certain creditors who had taken for their common protection a mortgage for the entire sum due to them, in lieu of their separate claims against the debtors, sued to enforce the mortgage as a whole for their common benefit, it was held that there was only one subject. *Muthuraman Chetty v. Sivasubramania Chetty*, 63 M.L.J. 316=36 L. W. 424=1932 Mad. 737.

(n) A suit for cancellation of the compromise and the preliminary and the final decrees in a previous suit does not embrace distinct subjects, and court-fee is payable on the value of the final decree only. *Kalu Ram v. Babu Lal*, 1932 All. 485 (F.B.)=54 All. 812.

**Alternative reliefs.**—A suit claiming money due on a promote principally from the legal representatives of the executant or in the alternative from a third party who took the money representing he was the agent of the deceased, does not require separate court-fee for each relief. *Ananda v. Luxaman*, 1930 Nag. 55. Where a plaintiff prays for one of two reliefs in the alternative based on one cause of action, the higher in value of the two reliefs determines the value of the claim and s. 17 of the Act does not apply. *Rajah v. Muttali*, 1926 Lah. 467. See also *Muklal v. Ramdheyan*, 44 I. C. 143. But in a suit for alternative reliefs one for a declaration of the plaintiff's right to certain properties for which a fixed court-fee is payable and

trained<sup>1</sup> at local head-quarters and camps, while officers were disgusted with the duty of training skeleton formations and interest was waning. The total establishment called for 133,000 all ranks, but the available sums were quite inadequate for any extension of training, the cost per head of population being 1.46 dollars. The cadet movement showed over 110,000 cadets, despite the reduction in the grant. The Militia is both for service in or outside Canada for the defence of the Dominion. All British subjects between 18 and 60 are bound to serve in the event of a *levée en masse*. A reserve Militia is specifically enlisted, and there are military and civilian rifle associations.

The administration under the Minister is directed by a Defence Council which began to function on 31 January 1924.<sup>2</sup> The Royal Military College at Kingston, which is to provide for 300 cadets, remains one of the most valuable assets of the country as a training centre for officers. Eight Imperial commissions a year are awarded to its graduates. There are eleven military districts; organization is on a brigade basis with ultimate aim at divisional organization. The units of the Expeditionary Force have been incorporated into the Militia with a view to preserve their traditions and *esprit de corps*.

In the Commonwealth the effect of the war and of the Washington Conference was to reduce the desire to enforce fully the system of compulsory training, especially as the Labour party, by which the principle was at first earnestly supported, had changed entirely its views and decided to make a plank of their platform the abolition of compulsion. The existing organization is territorial, and includes the permanent forces and the citizen forces; two cavalry divisions; four divisions; three mixed brigades; fixed defence troops (coast artillery and engineers) and non-divisional troops. Each division produces a battalion of infantry and a proportion of other troops. There is no compulsion save for home defence, and in war the

<sup>1</sup> The maximum period is thirty days; actually in 1924-5 it was nine, and this is usual.

<sup>2</sup> It comprises the Minister, the Deputy Minister, the Chief of Staff, the Director of the Naval Service, and the Comptroller (Finance Member), and as Associate Members the Adjutant-General, the Quartermaster-General, the Director, Royal Canadian Air Force, and a Secretary. The Air Force is administered under the Chief of Staff. In war time and under exercise the Militia falls under the *Army Act* rules of discipline.

determine the fee leviable in the suit. It arose in *Dasarathy Mesby v. Jay Chand*, 1625 Pat. 193, where one set of reliefs was declaration and partition and the alternative relief prayed for was possession. It was held that the reliefs requiring the higher court-fee should be charged for. See also *In re Venugopal*, 34 L.W. 837 = 67 M.L.J. 151.

## (ii) Different causes of action.

(a) *Where a single relief is prayed for.* Presumably only one fee is to be charged. It was observed in *Neelakandan v. Murthi-kandhan*, 30 M. 16 that section 17 may not apply to a case where the relief sought is one and the same though the claim is sought to be made out on distinct or alternative grounds. "It may be that where reliefs are claimed in the alternative with reference to same cause of action, s. 17 would not govern the case. That may also be so where the relief claimed is one and the same though the claim is sought to be made out on distinct or alternative grounds. It is however different where the reliefs are distinct though both are evidenced by the same instrument." But see the decision in *Pethu Reddiar v. Chidambara Reddiar*, 1931Mad. 533, and the comments thereon at page 330 *supra*.

## (b) *Where two or more reliefs are prayed for.*

There is a clear case. The fee for each reliefs should be separately charged for.

## (c) *Where alternative reliefs are prayed for.*

The court-fee is payable as in the case (b) above. The total of the fees chargeable on each relief should be levied.

The operation of section 17 of the Court-Fees Act is not necessarily confined to cases where cumulative reliefs are claimed. Alternative claims, forming different matters which could have been made the grounds of separate actions are "distinct subjects" within the meaning of the section, although they arise out of the same instrument and a suit for enforcing such alternative claims ought to be valued for the purpose of court-fee as also of jurisdiction on the aggregate value of such reliefs. *Nelakantan v. Murthi Kaundhan*, 30 M. 61. But in the headnote of this case, it is noted that the decision in 15 B. 82 is not approved. That does not appear to be quite accurate. The Bombay decision applies to a case where there is a single cause of action but here there are two different causes of action. The test as laid down in 1924 Pat. 596 and also in the decision of 30 M. 61 does not dissent from the view at all. The decision in *Hashmat-Misra Begum v. Muhammad Abdul Karim*, 29 A. 155, is also an authority for this position. The plaintiff came into court claiming in the first place specific performance of an alleged agreement to sell to him certain immoveable property, and secondly in the alternative, the enforcement of a pre-emption right in respect of a mortgage of a portion of the property executed by one of the defendants in favour of the other. It was held that the suit was within the meaning of section 17 of



Senior Cadets. There are three commands, two in the northern island, one in the south ; each includes four military districts with a like organization ; the plan of mobilization gives a complete division, and three mounted brigades, and supplies machinery to duplicate the force and keep it up to strength. The force numbers some 600 officers and 15,000 men ; training is compulsory, if enforced,<sup>1</sup> from the age of 18 to 25, while from 14 to 18 training may be enforced in the Senior Cadets, the training being mainly physical ; the force includes over 400 officers and 25,000 cadets. New Zealand retains the policy of administration through a general officer commanding in lieu of a Council of Defence under a minister as in Australia. Compulsory service is exigible from all males between 17 and 55 in case of emergency as opposed to 18 and 60 in the case of the Commonwealth and Canada. In New Zealand as in the Commonwealth the obligation to service is local, while in Canada it applies outside the Dominion for the defence of Canada. In the case of active service the *Army Act* applies generally, with such variations as may be prescribed in the local Acts.

In the Union a decided change resulted from the war. The Imperial Government accepted the suggestion of the Union Government that the Imperial military forces should finally be withdrawn, the Union accepting liability for coast defence. Accordingly, the Imperial property was handed over to be administered under the *Defence Endowment Property and Accounts Act*, No. 33 of 1922, and on 1 December 1921 the Imperial military command in South Africa was formally abolished. The system remains in principle as under the *Defence Act*, No. 13 of 1912. Every citizen of European descent is liable to render between his seventeenth and sixtieth year, both included, service in time of war in defence of the country in any part of South Africa within or without the Union. Moreover, if of sound physique he is liable to four years' training between his seventeenth and twenty-fifth year ; a minimum of 50 per cent. of those required to serve is enrolled yearly ; <sup>2</sup>

<sup>1</sup> It at present is enforced only up to the age of 21 and for those living within access of a training centre. Others form the reserve up to the age of 30. Rifle clubs are aided by ammunition grants but are not controlled.

<sup>2</sup> See the amending Act No. 22 of 1922 ; s. 6 allows in four years three periods of continuous training, the first not over fifty, the next two not over thirty days in all.

**Inherent powers of Court.**—An appellate court has inherent powers of consolidating appeals before it and the provisions of section 151 of the Civil Procedure Code may be invoked for that purpose. Courts should see whether a case is a fit one for consolidation, as if, consolidation is allowed, the Crown will be deprived of the public revenue, by the reduction in the court fees payable by the appellants. The fact that in an arbitration proceedings the award was split up ought not to be allowed to prejudice the right of the appellant to treat the award as one and they would be equally entitled to consolidation. *Gangu Naidu v. Deputy Collector of Madras*, 34 M. L. J. 279.

Where 78 ryots instituted a suit in respect of 78 holdings (1) for declaration that the rents entered in the Khalian were higher than the rents actually payable; and (2) for a declaration that 59 rent decrees which the landlord had obtained at the higher rents were contrary to law, it was held that a court-fee of Rs. 10 should have been paid in respect of each of the 137 causes of action namely 78 declarations that the rents entered in the Khalian were wrong and 59 declarations that the decrees obtained were contrary to law. *Chetheru v. Khaja*, 4 P. L. J. 297. This was followed by *Lachman v. Sheikh Abdul Karim*, 4 P. L. J. 299.

In *In re Perumal Nadar*, 109 I. C. 651 (Madras) it was held by Devadoss, J., that the High Court has inherent powers to consolidate appeals and allow a single vakalatnama to be filed in them and the decisions in *Kasi Prasad Singh v. Secretary of State for India*, 29 C. 140, *In the matter of "Falls of Ettricale"*, 22 C. 511, *Vengu Naidu v. Deputy Collector of Madura*, 45 I. C. 468 = 34 M. L. J. 278, were relied on. It was however further held that the appellate Court must know what is the relief granted against the defendant in each case and in order to draft a decree in appeal, it is essential that the court should have the decree of the lower court before it, and therefore, the parties are not relieved of the obligation to produce a properly stamped decree in each of the appeals filed by them. The Court may no doubt dispense with the production of the copies of the judgment in all but one as it is a common judgment in all the cases but the decree is not a common decree and when a decree is appealed against it ought to be produced along with the memorandum of appeal and it must also be stamped as required by law."

The question again came before Devadoss, J., of the High Court of Madras in C. R. P. Nos. 1517 to 1519 of 1927 (Madras High Court). His Lordship observed thus "that the court has power in proper cases to consolidate into one a number of cases in which the same question is involved cannot be seriously disputed."

The decision of Devadoss, J., has been overruled by the Full Bench decision in *Maharaja of Venkatagiri, In re*, 53 Mad. 248 (F.B.). There the question arose whether where 118 suits were filed against 118 sets of tenants under s. 77 of the Estates Land Act, and on the ~~ground~~ of same, 118 appeals were filed which too were dismissed, a

so as to afford 8,000 country youths training. General Smuts, on 18 February 1926, uttered a jeremiad over the bad results of the change, insisting that the country youths were losing the opportunity of discipline and training which would make them valuable in emergency, while adoption of the Swiss method of training was advocated by another speaker.

The purposes of the Union Government were further explained on 26 April 1926 by Mr. Creswell, on the defence estimate of only £895,312, who insisted on the limited need of defence for the Union and the general trend of national policy towards reduction of armaments. He deprecated any effort to carry out the policy of 1912, announced that the permanent force would be reduced to three batteries of artillery, the two squadrons of mounted rifles being dispensed with; in lieu of twelve military districts six military commandos would be set up, and forty selected areas would be given a training squadron of 200 youths, who would for four years receive compulsorily a certain amount of training. It was made clear that the desire was to secure for the youth of the Transvaal, the Orange Free State, and the rural districts of the Cape—Dutch strongholds—training which hitherto had been given chiefly in urban areas and the rural areas of Natal in connexion with the Natal mounted regiments. The Government aimed at having an air force which could strike at any enemy gathering within the Union within twelve hours, and at being able to mobilize a striking force of 10,000 men in seventy-two or ninety-six hours, with a further 15,000 in readiness in a few days. In the debate stress was laid by General Smuts on the absence of trained instructors for the youth and even the cadets of the Union, and a Nationalist member, Mr. Pienaar, called attention to the pitiful inadequacy of the steps taken, alluding also to the inability of the Union on such a basis to play its due part in the defence of the British Commonwealth of Nations. The Minister, no less than his critics, admitted that the Union was wholly deficient in effective naval defence, was, therefore, entirely dependent on British protection,<sup>1</sup> and ought to take a greater part in the burden of self-protection, but the Minister insisted that funds were not available.

<sup>1</sup> Nothing was said on the compatibility of this state of affairs and General Hertzog's demand for national status.

Where therefore there is nothing either in the Code or in any other enactment to prevent this course from being adopted, Courts have power to consolidate; but I do not think such power can be extended in a manner to conflict with the provisions of any enactment like the Court-Fees Act or the express provisions of the Civil Procedure Code as regards the filing of appeals.

It seems to me that consolidation can only be asked when there are suits or appeals properly instituted and on the file. Where the legislature lays down certain requirements necessary to be satisfied before it can be seised of the suit or appeal, e.g., a plaint or memorandum of appeal on a proper stamp, it is difficult to see how an order can be passed consolidating suits or appeals for the purpose of getting over the stamp duty payable.

There are two classes of cases in which consolidation can be ordered. One relates to cases where although one suit could have been filed against several defendants in the lower court, the party has not chosen to do so but has filed separate suits, and the other relates to cases where although one suit could not have been filed the questions for the determination are the same and it will save cost and expense to consolidate the suits either in the lower court or in appeal. In the former case the provisions of Section 17 of the Court-Fees Act are imperative because in the case of a suit embracing two or more distinct subjects, the plaint or memorandum of appeal should be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing each of such subjects would be liable under the Act. In cases where one suit could not have been filed, it is difficult to see how the aggregate value of the subject-matter in all the suits can be treated as the amount on which court-fee has to be paid. In cases which do not fall under Section 17, there is no question of treating the aggregate value of the various suits or appeals as one for the purpose of court-fee, as the provisions of the Court-fees Act are specific and state that each of such suits should bear the court-fee prescribed by the Schedules to the Act.

Reference has been made to *Kashi Prosad Singh v. Secretary of State for India in Council*, 29 Cal. 140. It was a case under the Land Acquisition Act and it was held that as the parties were the same in all the cases and the plots of land were contiguous and formed part of an estate although in the occupation of different tenants who were not parties to the appeals, the appeals should be consolidated and the court-fee paid upon the value of the consolidated appeals under Section 17 of the Court-Fees Act subject to the maximum of Rs. 3,000. The maximum of Rs. 3,000 has however now been omitted and court-fee has to be paid *ad valorem* without any maximum limit so that consolidation cannot in any view affect the court-fee.

In *Vengal Naidu v. The Deputy Collector of Madras Division*, 34 M. L. J. 279, there was an application to consolidate several appeals

Government and does no military training ; the four Cadet Corps equally eschew it. The Newfoundland Constabulary, constituted under c. 24 of the *Consolidated Statutes*, 1892, is semi-military in training, but is not liable for active service.

In the case of the Irish Free State<sup>1</sup> there had existed illegally but effectively from 1916 the forces known as Irish Volunteers, the Irish Citizen Army, 1916, and the Irish Republican Army, or 'the Army' *par excellence*. To regularize the position of these forces was desirable, though the Courts found it possible to hold that after the Treaty of 1921 they became legitimate forces of the Crown. By Act No. 30 of 1923, which, though temporary in duration, has in effect been extended by later legislation, the existing army was converted into the Defence Forces, even though the members had not been recruited and attested in the manner prescribed in the Act. Part I of the Act deals with establishment, organization, administration, appointments, and conditions of service, military education, service in time of war, and special powers in relation to the defence of the State and the maintenance of barracks. Part II deals with discipline, including the constitution and procedure of courts martial, and the confirmation of sentences, and prisons and detention barracks. It further regulates recruiting, billeting, and impressment. Part III covers the establishment, training, and discipline of the reserve, and provides for calling it out in case of national emergency or in aid of the civil power. In its legislation the Parliament is bound by Article 8 of the Treaty of 1921, under which the Irish Free State establishments shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain. It will be seen that there is a serious ambiguity due to the dishonest effort to treat Ireland as a unit ; under the exact terms, it is open to the Free State to argue that the whole population of Ireland is to be set off against that of Great Britain, ignoring the defection of Northern Ireland.

The *Ministers and Secretaries Act*, 1924, creates a Council of Defence which, however, in no wise derogates from the responsibility of the Minister. He presides as Chairman, and there are four members, a civil member, chosen from the Chamber of

<sup>1</sup> See *Journ. Comp. Leg.*, viii, pt. ii, pp. 30 ff.

only where the fee is not otherwise provided for (*vide* column 1 of Article 1 of Schedule I) and consequently that the existence of section 17 takes the cases to which that section applies out of the scope of the Proviso. Regarding this contention their Lordships observed thus "Section 17 of the Act makes no provision of this kind for the proper fee to be charged. It merely lays down a general rule that where a suit embraces two or more distinct subjects the plaint shall be charged with the aggregate amount of fees to which the plaints in suits embracing separately each of such subjects would be liable under the Act. Section 17 does not pretend to fix the amount of the fee but on the other hand expressly refers to other parts of the Act for the amount, that is to the Schedules, which alone deal with the amount. The general rule in Section 17 becomes necessarily governed by rules as to the amount of the fee to be found in the Schedules and among them by the Proviso to Article 1 Schedule I limiting the amount of fee. Sections 7 and 8 specifically declare the rates at which relief by suit of a particular class or character, therein defined, is to be calculated. The category of likely causes of action is, as far as can be, exhausted, but in order to guard against the possibility of cases arising for which no provision has been made, provision is made in Art. 1, Schedule I. The words 'not otherwise provided for in this Act' occurring in Article I, Schedule I, relates back to sections 7 and 8 and not to section 17. Further if the Article is to be applied, it must be applied in its entirety, and with the proviso which it contains, fixing a maximum fee leviable—a proviso which is in no way inconsistent with the application of the general rule contained in section 17 but which governs its application."

**Para 2 of the section.**—This relates to the converse case of splitting up of a suit into several suits. "Section 9, C. P. C.", referred to, relates to the Code of 1859. Section 158 of the C. P. C. 1908 provides as follows: "In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or Section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same.....such reference shall so far as may be practicable, be taken to be made to this Code or its corresponding part, Order, Section or Rule." Therefore "Section 9 C. P. C." must now be read as "Order II, r. 6 Schedule I of the Code of Civil Procedure (V of 1908)." That empowers a court to order separate trials where it considers that any causes of action joined in one suit though not bad for multifariousness cannot be conveniently tried or disposed of together.

18. When the first or only examination of a person who complains of the offence of wrongful confinement or wrongful restraint, or of any offence other than an offence for which police officers

Written examination  
of complainants.

any war without the assent of the Oireachtas' (i. e., Parliament). There is nothing revolutionary in the enactment, which has always represented Dominion practice. It will be remembered that in the Boer War Sir W. Laurier was not prepared to take any step beyond allowing volunteers to be raised for service in the British Army without the assent of the legislature, and obviously the necessity of securing funds alone would render recourse to the legislature essential at a very early date. The Irish provision, accordingly, merely turns into a part of the constitution a convention already existing. It would not prevent a ministry which approved a war making ready to give active aid during the few days before the legislature could be summoned, though, if a general election were on, the Government might be hampered in its action. The doctrine enunciated was acted on earlier by Mr. Mackenzie King when he refused, on 18 September 1922, to commit Canada to any active aid to the United Kingdom against Turkey without consulting Parliament,<sup>1</sup> and on 1 March 1923 he expressed his concurrence in the applicability to the Dominion of the Irish rule. On 26 March 1923 a formal motion to the effect that, save in the case of actual invasion, the Dominion should not be committed to participate in any war without the assent of Parliament was brought forward by Mr. Power, though too late for serious debate.<sup>2</sup> Mr. Meighen dissented from the mode of procedure and the substance of the motion alike, but on 16 November 1925<sup>3</sup> yielded to the pressure of political expediency and in a speech at Hamilton committed himself to the very difficult doctrine that Canada should dispatch no troops abroad until after a general election fought on the issue. This proposal was meant as a recantation of his part in securing the active participation of Canada in the war of 1914-18 and in special of his responsibility for the decision to adopt conscription and the tactics which won the election of 1917. It will be seen that it involves much more than the doctrine of the Irish Free State, and strictly speaking might be interpreted as suggesting that Parliament should forthwith be dissolved by

<sup>1</sup> *Canadian Annual Review*, 1922, p. 180.

<sup>2</sup> For a criticism by W. D. McPherson, K.C., see *ibid.*, pp. 1000 f.

<sup>3</sup> Keith, *J. C. L.* viii. 125 f. The doctrine was formally reiterated at Montreal on 4 June 1926.

an officer, warrant-officer, non-commissioned officer or private of Her Majesty's army not in civil employment.

(ii) [*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv) [*Rep. by the Cantonments Act, 1889 (XIII of 1889).*]

(v) Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

(vi) Plaints and processes in suits before District Panchayats in the same Presidency.

(vii) Plaints in suits before Collectors under Madras Regulation XII of 1816.

(viii) Probate of a will, letters of administration, [and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one [*two—Bengal*] thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

(x) Application relating to a supply for irrigation of water belonging to Government.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land-revenue by a person holding under direct engagement with Government, land of which the revenue is settled, but not permanently.



technically or legally at war by reason of Great Britain being at war.

I think (he prophesied) the whole trend of things will tend to make that opinion a fact. How far as a fact it will have any reality in the case of war it is very hard to say. It would be a valuable thing to have it established that the Free State would not be even technically at war, but from the point of view of utility the position of the Falkland Islands would be much more effective. I can only say that the general growth of opinion is towards the point . . . that it would be possible for Great Britain to be at war and other Dominions not to be even technically at war, but I do not think that is a thing that so far can be laid down as an actual definition.

This muddle-headed reasoning is tedious ;<sup>1</sup> the Dominions can become independent states by recognition by other powers, and they will then cease to be engaged in war when Britain is at war, but, as long as the term 'Dominions' is applicable to them, they will be, whether they like it or not, technically at war whenever Britain is at war, and no growth of Dominion opinion will alter the fact.

### § 5. *Naval Defence up to 1914*

The decision of the House of Commons of 1862 to call upon the colonies to exercise some measure of self-help did not contemplate the relaxation of the responsibility of the Royal Navy for the defence of the British possessions from oversea attack, and, as a result, as late as 1910 Canada, Newfoundland, New Zealand, and the Union of South Africa were wholly without naval defence, other than such protection as might be afforded by revenue vessels or fishery protection ships.<sup>2</sup> In Australia there was more action, because there was more obvious liability to attack, and in 1865 the legal position was cleared up by imperial legislation. It was admitted that under their general

<sup>1</sup> Gen. Smuts has been careless in his expressions : 'If a war is to affect them [the Dominions] they will have to declare it. If peace is to be made in respect of them they will have to sign it. Their independence has been achieved' (Allin, *Michigan Law Rev.*, xxiv. 273) is capable of misinterpretation, but he certainly did not mean to be taken literally, though Egerton (*Brit. Col. Policy in the XXth Century*, pp. 76, 168) as well as Allin find his words perplexing. Rhetoric in Premiers is dangerous. See also p. 917, n. 2.

<sup>2</sup> Canada has upheld the right of hot pursuit ; *The Ship North v. The King*, 37 S. C. R. 385. Cf. New Brunswick Act, 1886, c. 2.

*ascertain, regulate and record certain tenures in Chota Nagpore).*

(xxiv) Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.

(xrv) *Petitions of appeal by Government servants or servants of a Court of Wards against orders of dismissal, reduction or suspension; copies of such orders filed with such appeals, and applications for obtaining such copies*—  
New paragraph added in Bengal by Act VII of 1935.

#### COMMENTARY.

#### Legislative Changes

*Clause VII.* The words "and save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827" were substituted for the original words "and certificate mentioned in the First Schedule to this Act annexed No. 12" by the Succession Certificate Act of 1889, S. 13 (2).

*Clause XXIV* was substituted by Act XV of 1872 (The Indian Christian Marriage Act) for the original clause "Petitions under XIV and XV Vic. Ch. 40 S. 5 or under Act V of 1852, S. 9."

#### Clause I.

*Power of attorney.* It is provided that a power of attorney to institute or defend a suit when executed by a military officer and not in civil employ is exempt from court fee. Schedule II, Art. 10, provides that Mukturnama or Vakalatnama when presented for the conduct of any case is to be stamped as provided for therein. But a power of attorney to institute or defend a suit is not in the nature of a Mukturnama or Vakalatnama and cannot fall under Art. 10 of Schedule II. Powers of attorney authorising a person to institute or defend a suit are presented and returned after reference. Of course it is a different matter where such documents are filed as exhibits in a case. But when they are produced simply as vouchers to enable a person to institute or defend a suit on another's behalf, no court-fee is payable in any event. Under those circumstances, it is somewhat difficult to understand why the Legislature has made specific mention of such documents executed by military men as being exempted from court-fee thereby implying that such documents executed by non-military men are liable, while as a matter of fact they are not so liable in any case. See also S. 2 (21) of the Stamp Act and further commentaries under Art. 10, Schedule II of this Act.

#### Clause III.

The wording of this clause is somewhat misleading. "Order VIII. r. 1. C. P. C. provides that the defendant *may*, and if so required

The status of such vessels was further investigated in 1884.<sup>1</sup> Victoria had passed Acts Nos. 389 and 414 duly approved by the Crown in Council, as required in the Act of 1865, under which vessels commissioned by the Governor were subject to the regulations for the Royal Navy. Having had constructed in the United Kingdom two gunboats, she applied in 1884 for an Order in Council under s. 6 of the Act putting them for the period of the voyage to Melbourne in the position of vessels of the British navy. It was ruled by the law officers that an Order in Council under s. 6 could not be issued until one under s. 3 had been made; the latter step was held justified by the issue of the Governor's commission to the gunboats under the Victorian Acts; Orders of 4 March, therefore, accepted the vessels, and placed them at the disposal of the Admiralty. It was, however, found to be inadvisable to accept the boats for service in the Red Sea, as the liability of the crew for such service was dubious, and the use of the white ensign, as was normal for vessels of the Royal Navy, was negatived on the ground of inconvenience in relations with other units of the navy; the gunboats then went out under the blue ensign and pendant. It was, however, agreed that as regards vessels raised for local defence within territorial limits the use of the blue ensign and pendant should also be sanctioned. It is clear that the Imperial view was that only under the Act of 1865 could colonial naval vessels have a legal status outside the colonial limits.

In addition to the two Victorian gunboats Orders in Council of 30 December 1884 and 24 January 1885 were issued under s. 3 to approve the maintenance of the heavily armed small cruiser *Protector* by the South Australian Government under Act No. 307 of 1884, and of the Queensland gunboat *Gayundah* under Act No. 27 of 1884. In 1900, under ss. 6 and 7 of the Act, a gunboat, its crew, and volunteers, were accepted by Order in Council of 7 August for service in China. But as a rule the Colonies relied on their local legislation. Not much was done; the large expanse of Port Phillip and Hobson's Bay open to enemy cruisers led Victoria to provide herself with a force, which in 1885 at its strongest included a wooden frigate,

<sup>1</sup> *Parl. Pap.*, H. C. 125, 1884-5. Only four of the vessels in use in 1910 were covered by Orders in Council, and ten not.

### Written statements in certain cases.

**Partition suit.** Defendants praying for division of shares *inter se* need not pay court-fee on their written statements for that relief. *Hem Chandra v. Prem Mahto*, 90 I. C. 789=1926 Pat. 154. This view was approved in a recent case in the High Court of Madras, *Venkatasubhamma v. Ramanadhayya*, 55 Mad. 975=63 M. L. J. 845=1932 Mad. 722. The question for decision was whether in a suit for partition, one of the sharers who asks for a decree for his share, should have paid court-fee to make his claim effective. Their Lordships distinguished the case in 24 Bom. 128 relied on by counsel for the second defendant, on the ground that that was a case in which the High Court delivered judgment a month after the passing of the Stamp Act II of 1899 and that as it contained no reference to that Act, the remarks of the High Court must have been made apart from the Stamp Act. The view expressed in 90 I. C. 789 was approved to the effect that the defendant in a partition suit had merely to ask for his share and it was then open to the Court to order the defendant's share also to be separated and the right of the Crown to some revenue on the claim of the defendant would be satisfied by the direction in the Stamp Act that the decree as finally drawn up should be stamped as an instrument of partition and except that stamp duty, no other duty as Court-fee was payable by the defendant in such a suit. In this connection their Lordships dissented from the decision in 6 L. W. 448.

The Sind Court has held that a relief prayed for in the written statement in a suit for partition of certain joint property claiming that the plaintiffs had been managing the property and recovering the rents and that they should give accounts of the rents, should be valued and the necessary Court-fees paid. *Shaganlal v. Hariram Tiloomal*, 1933 Sind 304.

**Objections to award.** Objection to an award must be stamped. It is not construed as a written statement and does not fall within the exemption. See *Adamali v. Abdulali*, 107 I. C. 223=1928 Sind 87.

### Clause V.

**Plaints in suits that are actually tried by village munsifs in the Madras Presidency.** It is not sufficient that a suit has been instituted in a Village Munsif's Court. It must be actually tried there.

### Clause VIII.

The minimum has been raised from Rs. 1,000 to Rs. 2,000 by the Bengal Court-fees Amendment Act IV of 1922. This clause is obviously redundant in view of the provision in Art. 11 of Sch. I of the Act which provides for the levy of fees only where the value exceeds Rs. 1,000. It is an accepted proposition of law that no document is chargeable with fee unless it is specifically provided for and where there is no provision to charge probates, etc., where the value is

Naval Reserve of 25 officers and 700 seamen and stokers. One was to be kept in reserve, three partially manned for training the Royal Naval Reserve, and the rest in full commission. Australians were, as far as possible, to man the three drill ships and one other, but they were to be officered by officers of the Royal Navy and the Royal Naval Reserve. The cost was to be borne up to one half, but not exceeding £200,000, by Australia, now federated, and £40,000 by New Zealand. The agreement was accepted by the Commonwealth by Act No. 8 of 1903, but only after a serious Parliamentary struggle, during which Mr. Higgins<sup>1</sup> declared that the expenditure could not be justified under the terms of the Constitution, and, without difficulty, by Act No. 30 of 1903 in New Zealand.

Mr. Deakin,<sup>2</sup> who took the place of Sir E. Barton, whose chilly reception after the Conference of 1902 hastened his retirement to the Supreme Court, showed his appreciation of the desire of the Commonwealth for its own force by proposing to the Admiralty that there should be a local navy which might be placed in time of war under the Admiralty, but in peace would be wholly under local control. He argued that the view of the Colonial Defence Committee that Australia was safe against any serious attack, and, even if the Imperial squadron were removed, need only fear some commercial raiding, was not satisfactory, for the damage done by such raiders, even if secondary in importance, might be serious for the Commonwealth. Difficult questions arose. Since the Act No. 20 of 1903 the State ships had come under the Commonwealth and claims for an extended legislative power were based on s. 51 (vi) giving legislative authority as to defence, and on s. 5 of the covering Act of the Constitution, which made the laws of the Commonwealth apply to all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination were in the Commonwealth. A Commonwealth navy, it was argued, would not be in the sense of the Constitution the Queen's ships of war, but would fall under Commonwealth defence law, even outside territorial

<sup>1</sup> *Parl. Deb.*, 1903, pp. 1997 f.

<sup>2</sup> *Parl. Pap.*, Cd. 3523, pp. 128 ff., 469 ff.; Cd. 3524, pp. 38-71; *Parl. Pap.* (Commonwealth), 1901, No. 52, A. 12; 1905, No. 66; 1906, Nos. 44, 81, 82; 1907-8, Nos. 6, 143, 144; 1908, Nos. 6, 37.

prisoner himself. It is not liable to stamp fee. *Jagannath Kobar v. Emperor*, 65 I. C. 553=4 U. B. R. 72.

### Clause XVIII.

"*Complaint*." It has been defined by the Code of Criminal Procedure, Section 4 (k) as meaning the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person whether known or unknown has committed an offence, but it does not include the report of a police officer."

#### *Public servant.*

For the definition of the term see Section 21 of the Indian Penal Code. S. 2, C. P. C. also.

#### *Municipal Officer.*

The separate mention of a municipal officer in the clause in addition to the words "public servant" makes it appear that a municipal officer is not a public servant. But clause 10, Section 21, I.P.C., is comprehensive enough to include a municipal officer within the definition of a public servant. The illustration given under the clause is "A Municipal Commissioner is a public servant." *A fortiori*, a municipal servant is a public servant. Further, Explanation I to the Section is to the effect that "persons falling under any of the above descriptions are public servants *whether appointed by the Government or not*." The words "municipal officer" in the clause seems therefore to be redundant.

#### *Complaint by Municipal Officer.*

No fee is leviable. *Queen Empress v. Khajaboy*, 16 M. 423.

#### *Cantonment Authority.*

The Government of India have ruled that a cantonment authority is not "a public officer" as defined in the Cr. P. C. The Government therefore direct that process fees and diet money to witnesses should in future be collected from the Cantonment Authority in all cases of prosecutions by the Police on their behalf. A Cantonment Authority is exempt from the payment of court-fees on complaints under S. 19 (xviii) of the Court-Fees Act as it is a public servant as defined in S. 21, I. P. C. *G. O. 3364 Mis. dated 30th August 1929.*

### Clause XX.

Application for refund of costs deposited for preparation of a Privy Council appeal should be stamped with a court-fee of Rs. 2 and is not exempt. *Haridasdi v. Gopesdwar*, 1923 Cal. 599=27 C. W. N. 646. It was contended in this case that the application was one for payment of money due by Government to the applicant and came within the exemption in this clause. The money was lying in the Bank to the credit of the Registrar of the High Court. It was held in the circumstances that the application was not for payment of money due by the Government to the applicant within the meaning of this clause and that on the other hand it was an application presented

at which the Commonwealth was represented by a new Ministry, the Labour Government having been defeated on the score of its failure to make a sufficiently generous offer of defence—met in July and August. New Zealand then preferred to adhere to a contribution; Australia desired a local unit and it was agreed to create a Pacific fleet of three units, in China waters, Australia, and the East Indies, each unit consisting of a large cruiser, three second-class cruisers, six destroyers, and three submarines. Australia was to provide the armoured cruiser for her unit, New Zealand that of the China unit, and some of the smaller ships of that unit would have their headquarters in New Zealand waters, though the whole unit would be under the Admiralty. The Australian unit, on the other hand, was to possess an autonomy, subject to arrangements for identity of training, discipline, &c., and she would take over the dockyard at Sydney. Canada proposed to build cruisers and six destroyers over nine years, to guard her two coasts and to take over the Admiralty property at Halifax and Esquimaux, which was duly surrendered in 1910–11 by the Admiralty. The Cape and the other South African colonies could do nothing pending union.<sup>1</sup>

Canada legislated in 1910 (c. 43) to control her new squadron, assuming that she possessed extra-territorial authority, and the Commonwealth<sup>2</sup> followed suit by Act No. 30 of 1910. The Canadian Act provided that in emergency the Governor in Council might place the fleet and its officers and men under the Crown for service in the Royal Navy, in such event Parliament to be summoned within fifteen days if not sitting or due to meet earlier. Otherwise the code governing the Royal Navy would normally apply to the Canadian forces, unless otherwise provided for by Canadian regulation under the Act. Bitter controversy<sup>3</sup> was excited by the Act; Messrs. Monk, Bourassa, and Lavergne attacked the Government as accepting responsibility for all British wars and providing Canadians to fight

<sup>1</sup> *House of Commons Deb.*, ix. 1310–13. For Natal naval volunteers, see Act No. 33 of 1907; for contributions No. 5 of 1903; Cape No. 20 of 1898.

<sup>2</sup> The loan for construction contemplated by Act No. 14 of 1909 was dropped by the new Government (No. 6 of 1910), which accepted its predecessor's policy. New Zealand, by Act No. 9 of 1909, provided the funds for the *New Zealand*.

<sup>3</sup> Skelton, *Sir Wilfrid Laurier*, ii. 316 ff.

paid too high a court-fee thereon, if within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority [for the local area] in which the probate or letters has or have been granted,

and delivers to such Authority a particular inventory and valuation of the property of the deceased verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required, the said Authority may—

- (a) cancel the stamp on the probate or letters if such stamp has not been already cancelled ;
- (b) substitute another stamp for denoting the court-fee which should have been paid thereon ; and
- (c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

#### COMMENTARY.

**Synopsis of the chapter.**—This chapter consists of 11 sections dealing with the court-fee payable in respect of probates and letters of administration. They could be classified as follows, Sections 19-A and 19-B deal with cases where a higher fee than what is properly payable has been paid.

**Section 19-A** provides that where a higher fee has been paid on account of over valuation of the estate, and an application is made within 6 months for refund of excess court-fee paid, it could be so refunded.

**Section 18-B** provides that where debts have been paid out of the estate thereby reducing its value, and if a higher fee had been already paid, the difference could be got back, if an application is made within 3 years.

**Section 19-C** provides against duplicate payments of fees, in the case of several grants.

**Section 19-D** validates probates as regards trust properties though not included in the application for probate.

**Sections 19-E, F, G, H, & J.** deal with the converse of sections 19-A and 19-B and relate to cases of under-valuation of the estate, the subsequent payment of a too low court-fee, the penalties and forfeiture ~~in such cases~~ for same, and the mode of collecting same. Of the sections,



officer commanding but not interfering needlessly in domestic economy. In war, if the fleet of a Dominion were put under the Admiralty, it would be treated as incorporated in the Royal Navy for the time being. It was agreed that the necessary officers for courts martial should be lent by the Admiralty when required, and officers would also be given on loan, who would count their Dominion service for seniority, promotion, &c., and there would be a common list of officers for seniority by date of their commissions in the three services. Changes in regulations were to be discussed among the governments, the Dominions having adopted the general principle of applying the Naval Discipline Act, the King's regulations, and Admiralty instructions to their forces.<sup>1</sup>

It remained to make the new scheme effective by passing the *Naval Discipline (Dominion Naval Forces) Act*, 1911. It applies to the naval forces of any Dominion, to which before or after the Act the provisions of the *Naval Discipline Act*, 1866, and amending Acts have been made applicable, the Act of 1866 as amended, subject to any adaptations made by the Dominion, to fit the Act to local circumstances, such as the substitution of Governor-General for Admiralty; it also empowers the Crown to modify the Act of 1866 by Order in Council in order to regulate the relations of the Imperial and the Dominion forces, provided that, if the Dominion forces are placed under the Admiralty, the Act of 1866 will apply to them without any modifications. The Act was made dependent for its operation on adoption by any Dominion, the right to annul this adoption presumably being admitted, though this was left uncertain. Adoption by the Commonwealth followed in 1912; from 1 July 1913 the Naval Board of the Commonwealth took over charge of the fleet under the Act of 1910; a naval college was opened at Jervis Bay to train officers and the *Tingira* started training boys, who were to serve until twenty-five in the navy. The necessary Order in Council was issued on 12 August 1913. The Commonwealth had before it as an ideal a scheme devised by Admiral Sir R. Henderson,<sup>2</sup> which was to give the Commonwealth a powerful fleet. New Zealand in 1913,<sup>3</sup> under Mr.

<sup>1</sup> *Parl. Pap.*, Cd. 5746-2.

<sup>2</sup> *Parl. Pap.*, Cd. 6091, p. 15.

<sup>3</sup> For the circumstances, see Keith, *Imperial Unity and the Dominions* pp. 326-8; Act No. 45 of 1913.

- (1) forfeit a sum of Rs. 1,000 and
- (2) pay a further sum (penalty) at the rate of 10 per cent. on the amount of the sum wanting to make up the proper court-fee. It may be noticed that there is no provision for the payment of the deficit court-fee itself. It is well conceivable that the forfeiture of Rs. 1,000 may fall short of the actual deficit in the court-fees.

**Section 19-J** provides for the collection of the forfeiture and penalty. Para (1) of the section provides that "any penalty or forfeiture under S. 19-G may be recovered from the executor or administrator as if it were an arrear of land revenue by any collector in any part of British India." Regarding the penalty leviable under S. 19-E there is no such summary procedure laid down for obvious reasons. The revenue authority could refrain from stamping the probate or letters of administration, in case the fee and penalty are not paid. The Government can also file a suit for the recovery thereof.

**S. 19-J (2)** vests in the chief controlling revenue authority the power to remit

- (1) the whole or any part of the penalty or forfeiture levied under S. 19-G or
- (2) any part of the penalty under S. 19-E or
- (3) any court-fee under S. 19-E in excess of the full court-fee which ought to have been paid.

If **S. 19-J (2)** is read with the proviso to S. 19-E, it follows that if the person getting the probate or letters of administration, applies to have it stamped with the proper fee and makes such application within 6 months after the ascertainment of the true value by him, the *whole* penalty can be excused by the Revenue Authority. But if it be later than 6 months after such ascertainment by the applicant, and below one year after the grant, he has to pay a certain penalty, and foregoing the court-fee already by him pay the proper fee: and if his application is after one year after the grant, he has to pay a higher penalty and the payment as aforesaid. Of these penalties the Revenue Authority can remit only "any *part*" (S. 19-J (2)). What that part is, is entirely within the discretion of the Revenue Authority. But the applicant is bound to pay *some* penalty, in case he files the probate or letters for being properly stamped. On the other hand, where he does not make any such application, and a forfeiture and penalty are levied under S. 19-G the Chief Revenue Authority could waive the *whole* or part of same. S. 19-H provides for a case of enquiry into the valuation. The Collector may in cases where he thinks there has been an under-valuation direct the applicant to amend the valuation, and, if he fails to comply with it, move the court to hold an inquiry as to the true value of the

service in providing a steady flow of recruits for the navy and mercantile marine. The Naval Reserve itself passed to Imperial control on 3 August. The Act of 1913, unlike those of Canada and the Commonwealth, provided for immediate transfer to Imperial control on the outbreak of war. This, however, made no difference in actual celerity, for Canada at once made over the *Rainbow* and the *Niobe*, her small cruisers, and the British Columbian Government with praiseworthy initiative purchased at Seattle and presented to the Admiralty a couple of submarines originally built for Chile. The response of Newfoundland was remarkable; the Naval Reserve developed as a result of the Conference of 1902 was popular with the men, and they hastened to rejoin the drill ship *Briton* at St. John's; 100 of them in September helped to man the *Niobe*, and in all 1,964 served during the war, of whom 179 perished and 125 were invalided out of the service. Their work was done in many seas and places, at the battle of the Falkland Islands and at Jutland, but their special *métier* was patrol work, for they were invincible in the dangerous art of handling small craft in stormy seas.

The Commonwealth Navy was formally placed under the Admiralty on 10 August 1914, but this was merely due to oversight; it had come under Admiralty directions on the eve of war and the flagship was steaming north to seek the enemy cruisers in the Bismarck Archipelago. The fleet thus handed over in due course comprised the battleship *Australia*, 19,200 tons; the cruisers, *Melbourne*, *Sydney*, *Brisbane*, 5,400 tons; *Encounter*, 5,900 tons; two small cruisers, *Pioneer*—given by the British Government—and *Psyche*; six destroyers; two ill-fated submarines, both of which perished, by accident and capture, in the first year of the war; the old gunboats *Protector* and *Gayundah*; and two sloops, *Fantome* and *Una*. The *Psyche* and *Fantome* were handed over by the Admiralty to be manned by Australians in 1915, the *Una* was captured from Germany in October 1914. The Australian submarine depot ship *Platypus* and the oil-tanker *Korumba* were taken over by the Admiralty for service in European waters, and seventy-six other vessels were used in patrol and mine-sweeping work. At the end of the war the Royal Australian Navy numbered 325 officers and 4,647 men. The first duty of the squadron was to

the court's jurisdiction at the time of his death; it is not payable on the deceased's assets which at the time of his death were in a foreign country but have since his death come within the jurisdiction and been administered by his executor or administrator. And the reason of this rule was stated by Lord Lyndhurst in *Attorney General v. Diamond*, (1831) 1 C. & J. 356:—"The probate is granted in respect of the effects which are within the jurisdiction of the spiritual judge at the death of the testator. The jurisdiction is exercised in respect of these effects only. If the executor thinks fit he may remove the goods from one jurisdiction to another, he may shift them from jurisdiction to jurisdiction. But this does not affect the right of granting probate which is regulated by the local situation of the effects at the testator's death." See also *Attorney General v. Hope* (1834) 2 Cl. and Fin. 84; *Pearse v. Pearse* (1838) 9 Sim. 430. Where assets had been remitted by the testator from India to England, but before their arrival in England the testator had died in India, it was held that probate duty was payable on them. "Actually and *de facto* the bills in question were on the high seas," said Kelly, C. B. "Now I do not know whether the point has ever been determined, but I am clearly of opinion that where property belonging to a British subject is on the high seas and probate is taken out in this country, that property forms part of the estate and effects of the deceased subject to probate duty: otherwise the inconceivable result would follow, that if a person were to sail out in his yacht with valuable property on board and died on the high seas, duty would not be payable on the yacht and the valuable property on board, on the ground that it was not at the time of death within the jurisdiction of this Court though not within any other." *Attorney-General v. Pratt* (1874) L. R. 9 Exch. 140.

In *In re Abraham* (1896) 21 Bom. 139, differing from the ruling of Garth, C. J., in *In the goods of March* (1879) 4 Cal. 725, Strachey, J., held that the principle established by the English cases governed the payment of probate duty under the Court-Fees Act, and that assets of the deceased coming within the jurisdiction from abroad subsequent to the grant were not liable to probate duty.

The deceased's share in a partnership is assets in the place where the partnership business is carried on. So, where a partnership carried on business in India in the cultivation of estates and the sale of the produce by means of agents, but subject to the control of a committee of the partners all of whom save two resided in the United Kingdom, it was held that the business was an English business, and that the share of the deceased partner not being property situated within British India was not subject to probate duty in India. *In the goods of Sassoon*, (1897) 21 Bom. 673. See Probate Procedure in British India by the Hon. Mr. Justice Cornish.

In *In the goods of G. T. Williams* deceased, 50 Cal. 597, it has been held that the fee is payable on the scale in force in the Province

was not at once requisite. Canada, however, passed this year the necessary Act to accept the Imperial Act of 1911. In 1919 Admiral of the Fleet, Lord Jellicoe, was sent on a tour of inspection and advice, resulting in elaborate reports explaining clearly the principles of naval strategy and the necessity to Australia of being assured of the protection of the British fleet. The complete interdependence of the various problems of defence was emphasized and a plan adumbrated of co-operation between the Imperial and Dominion governments through the creation of the office of Commander in Chief at Singapore. This officer would be in close touch with the Imperial China and East Indies squadrons, and those of Australia and any other Dominion, and under him in war would normally fall the whole of the fleets in the Far East. He contemplated a very powerful fleet to which Australia, New Zealand, and Canada might contribute, while the Union should maintain a squadron at the Cape to guard trade on the west coast, leaving that on the east coast to the care of the Far Eastern fleet. He suggested as a basis of cost of naval expenditure generally, United Kingdom, 74·12, Australia, 7·74, New Zealand, 2·02, Canada, 12·30, and South Africa, 3·82. His proposals were not welcomed in the Dominions. The Minister for Naval Defence in Canada explained in 1920 that the Government thought that it was too early to decide on any scheme ; in the meantime it accepted a light cruiser, two destroyers, and two submarines from the Imperial Government, meditating a return to Sir W. Laurier's policy of 1910 on a reduced scale. Mr. King and Mr. Lemieux were unwilling even to do this, in view of the defeat of Germany and the satisfactory relations with the rest of the world. In the meantime Canada fell in line with the other Dominions by securing the issue of Orders of Council of 28 June 1920 placing the Dominion on the same footing as regards relations with the Imperial forces, common commissions, &c., as Australia and New Zealand. Australia also in 1920-1 reduced drastically her establishments, but accepted one flotilla leader, five destroyers, six submarines, and three sloops, while New Zealand received a cruiser. In the Union General Hertzog attacked the continuation of the small grant of £85,000 to the Imperial navy, while Mr. Merriman observed on its incredible meanness, reviving Mr. Hofmeyr's suggestion of a tax on imports as a

**Debts.**—Debts mean only the debts which the testator was bound to pay and for which his estate can be proceeded against. They do not include legacies or trusts provided in the will. *Percival v. Reg*, 33 L. J. Ex. 289; but it is otherwise where under a marriage settlement the testator was under an obligation to provide for his children and he has appointed his son as executor to make the necessary provision. *Lord Advocate v. Hagart*, 2 H. L. 417.

**Property subject to mortgage or annuity.**—The mortgage amount or the capitalised value of the annuity should be deducted. See Annexure B schedule III of the Act, and commentaries on S. 19-I. See also *In the goods of Peter Innes*, 8 B. L. R. 43; *In the goods of Ramachandra Lakshmanji*, 1 Bom. 118; *In the goods of Rushton*, 3 Cal. 736.

**Rent of house.**—Where letters of administration are granted, limited for the purpose of collecting rent of a house, the duty is to be assessed on the value of the house. *In the goods of Ramachandra Doss*, 18 W. R. 153.

**19-C.** Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

#### COMMENTARY.

**Legislative changes.**—The word “such” which occurred after the word “whenever” was repealed by the Repealing and Amending Act XIII of 1891.

**Scope and object of the section.**—In *Swarnamayee Debi v. Secretary of State for India*, 45 C. 625, their Lordships observe thus “What the Legislature appears to have intended is that where the full fee chargeable under the Court-Fees Act on a probate at the time it is granted has been paid, no further fee shall be chargeable when a second grant is made in respect of that property as comprised in that estate.”

a widespread feeling that the policy was deliberately provocative to Japan, and that it would be wiser to cultivate good relations with a former ally than expend sums on a base which, if the views of Sir P. Scott and Mark Kerr as to the obsolescence of the battleship were correct, would be no sooner completed than it would be antiquated. A vague assurance of aid was given by Australia, while New Zealand decided to pay £100,000 a year as a contribution to the cost. The decision of the Labour Government in 1924 to abandon the Singapore scheme was not very seriously resented even in Australia and New Zealand, but both welcomed the determination of Mr. Baldwin's Government in 1925-6 to proceed, if slowly, with the project, though it was felt that the leisurely mode of action was inconsistent with assertions of the Imperial importance of the scheme, the Admiralty evidently preferring to be given new cruisers rather than a new base.

In Australia in 1923 the effect of the Washington treaties was seen in the reduction of the number of men to 3,500 and of vessels in commission to thirteen from twenty-five. In 1924, however, partly as a result of the apparent failure of the Imperial Government to provide adequately for Australian defence, a more manly attitude was decided upon, and in 1925 orders were definitely placed for two cruisers of the maximum size (10,000 tons) permitted under the Washington Treaty, two submarines of the ocean-going type, and one seaplane carrier of 6,000 tons, this one only to be constructed in Australia by the Commonwealth Shipping Board. It was agreed also to subsidize by £135,000 the New South Wales Government to build a floating dock to be available in war or emergency. The Naval College at Jervis Bay is maintained to train some fifty boys a year, examination being open to all boys in their thirteenth year, the final selection being made from those qualifying; boys from 14½ to 16½ are eligible for training in the *Tingira* at Sydney, on undertaking to serve to 30. There is also the Royal Australian Naval Reserve of some 6,800, composed of citizen naval trainees.

In New Zealand, following the example of the Commonwealth, a Naval Board was constituted by Order in Council of 14 March 1921, charged with the control and executive command of the unit, which by Order in Council of 20 June was named 'The

to enable a fresh grant being applied for, the latter is exempt under this section from the payment of court-fee. *In the will of Alfred Jones*, 1 S. L. R. 177.

(3) *Second executor taking out probate*.—Where in pursuance of leave reserved probate was taken out by second executor, a fresh fee is chargeable. *In the goods of Bibee Ameerum*, 15 W. R. 496.

(4) *Death of executor*.—Where an executor to whom probate has been granted dies leaving a part of the estate unadministered, and another person is appointed to complete the administration, no fresh fee is leviable, *Swarnamoyee v. Secretary of State*, 45 Cal. 625 = 30 I. C. 394; *In the goods of Samuel Balthazar*, 4 L. B. R. 255.

(5) *Grant de bonis non*.—Where the appointment is made *de bonis non*, there is no new succession, or devolution of the estate which would justify a finding that fresh court-fee must be paid. *In the matter of Maung Win Pan* deceased, 3 R. 9C = 1925 Rang. 217.

**Death of beneficiary and fresh devolution of estate.**—This section has no application when the beneficiary under a testator's will dies before the administration is complete and an administration of the deceased beneficiary's estate becomes necessary. *Bhagwati Saran Singh v. Secretary of State*, 54 I. C. 703 = 5 Pat. L. J. 36.

**Increase in the value of the property.**—No fresh court-fee is payable although the value of the property may have increased after the previous grant. *Swarnamoyee Devi v. Secretary of State for India*, 45 C. 625; *In the goods of Samuel Balthazar*, 4 L. B. R. 225.

**Power of appointment.**—See commentaries under section 19 I.

**Valuation.**—For decisions bearing on the question as to how the property should be valued, see commentaries under s. 19-I.

**Exemption.**—For exemption of estates of certain value, see section 19 (viii).

**Section applies only to properties situate in British India.**—See *In the goods of Sir Albert A. D. Sassoon*, 21 B. 673.

**Probate jurisdiction of the court**—The probate jurisdiction of the court is founded on the deceased testator or intestate having had a place of abode or having left property within the local limits of the court's jurisdiction. It follows that the court has no power and jurisdiction to grant probate or letters of administration if the deceased did not at the time of the death have a fixed place of abode or leave property within the presidency or province or within the district as the case may be. *In the goods of Rose Learmonth*, 21 M. 120; *Bhavre v. Lakshmi Bai*, 20 B. 607.

**Change of venue.**—The removal of the property of the deceased from the jurisdiction of one court to that of another court does not affect the power of the court in whose jurisdiction the property was at the date of the testator's death to grant probate.



transferred, by the contention that in practice a British ship transferred to the Commonwealth would not be prepared to obey any instruction to take warlike action without Imperial authority. Mr. Bruce adopted the attitude that it was understood between the Governments that hostile use of a transferred vessel should be made only for purposes of protecting lives and property of British subjects, as in the case in question, and he added that many Australians were, in point of fact, resident in China and entitled to the full protection of the Empire and the Commonwealth.

On 11 March 1926 the First Lord of the Admiralty gave striking figures of the comparative naval expenditure of the Dominions and the United Kingdom, when intimating the decision of the Indian Government to reconstitute the Royal Indian Marine as a combatant force and to continue the payment of £100,000 annually towards the expenses of certain ships in Indian waters. The Straits Settlements was paying for the site of the Singapore dock, £146,000; Hong Kong had given £250,000; the Australian estimates for 1925-6 were £2,421,000 plus £1,500,000 in respect of new construction; New Zealand was spending over £500,000, Canada £280,000, and South Africa £140,000 as compared with £58,100,000 for the United Kingdom for 1926-7, a reduction of £2,400,000 on the preceding year. In 1925-6 the figures of expenditure per head were: United Kingdom £1 6s. 10d., Canada 0·15 dollars, Commonwealth 13s. 2d., New Zealand 8s., Union 1s. 9d. Taken in proportion to £1,000 of export and import trade the figures were: United Kingdom £26 17s. 7d., Canada 0·75 dollars, Commonwealth £12 8s. 2d., New Zealand £4 19s. 11d., and Union 18s. 11d.<sup>1</sup>

<sup>1</sup> Compare a candid view in *The Round Table*, xiv. 859 ff. Malaya gave, in 1926, £2,000,000, but, of course, this means Imperial pressure, or the complaisance of the Sultans, not popular will. In April 1927, New Zealand promised £1,000,000 in seven or eight instalments for Singapore. The total defence expenditure in 1924-5 was per head: United Kingdom, £2 13s. 8d.; Canada, 5s. 6d.; Australia, 18s. 1d.; New Zealand, 9s. 10d.; South Africa, 13s. 1d.; Irish Free State, 18s. 11d.; India, 3s. 3d.

sets out as an item of deduction "property held in trust not beneficially or with general power to confer a beneficial interest."

**"Property held in trust not beneficially"** is property in which the deceased had simply the legal title of a trustee and no beneficial interest.

**English law.**—Property which the deceased shall have been possessed of or entitled to as trustee for any other person or persons and not beneficially was exempted from probate duty by the Stamp Act 1815, 55 Geo. III, C. 184. Sch. Pt. III; see also *Carr v. Roberts*, (1831) 2 B. and Ad. 905. The present section follows the provisions of 48 Geo. III, C. 147 section 35, and provides that the probate or letters of administration is valid notwithstanding such "trust property" was not included in the amount or value of the estate of the deceased and no court-fee paid thereon.

**Trust Property.**—The exemption relates only to property of which the testator was trustee and not property over which he has created a trust. *Deputy Commissioner of Singhum v. Jagadish De*, 62 I. C. 513—1921 Pat. 206.

**Survivorship and the Code Nepolean.**—Where under the Code Nepolean which governed an ante nuptial contract, upon the death of either of the contracting parties, the property was divisible into two parts of which one part would go to the survivor and the other part to the heirs or devisees of the deceased, it was held that the deceased held half the property as trustee not beneficially, and that probate duty should be charged only on the half which represented his share in the estate. *In the goods of Froeschman*, 20 C. 75.

**The court has no powers to go behind the will of the testator.**—Where a testator bequeathed the whole joint family property inclusive of that of the son, purporting that the whole property is his, the court could not go behind the will and the averments therein, and no exemption inconsistent with the provisions of the will can be granted. *Kashinath v. Gourabai*, 39 B. 245—28 I. C. 473. But see *Keshavlal v. Collector of Ahmedabad*, 48 B. 75=77 I. C. 749—1924 Bom. 228.

**Hindu Joint Family Property.**—On the question whether the undivided share of a deceased co-parcener in the property of a Hindu joint family governed by the Mitakshara law, is to be regarded as "property held in trust not beneficially," there is a conflict of opinion between the High Courts. Such a question arose where joint family funds have been invested, in the name of one of the co-parceners, in shares in a Bank and on the death of that co-parcener the Bank required the production of probate or letters of administration as evidence of title to the shares or the moneys of the deceased. The CALCUTTA High Court in *In the goods of Pokurmul Augurwallah*, 23 C. 980; and the BOMBAY High Court in *Keshavlal Punjalal v. Collector of Ahmedabad*, 48 B. 75, have ruled that the deceased

obligation to accept all the proposals of ministers. The Imperial Government must decide on the issue of numbers to be allotted. On solemn occasions, such as that of the federation of Canada and the union of South Africa, political honours were granted to members of different political parties on Imperial responsibility. Sir O. Mowat's honour was asserted to have been thus conferred,<sup>1</sup> but on 11 November 1907, when Sir C. Tupper was made a Privy Councillor, it was expressly stated to be on the advice of the Prime Minister.<sup>2</sup>

Difficulty has arisen especially in the case of the Commonwealth, for there the States and the Commonwealth may recommend for honours, and, as a means of securing some uniformity of standard, the recommendations of the States pass before the Governor-General, not his ministers, a procedure to which advocates of State rights take exception. But there seems no constitutional ground for objection, for the Imperial Government has a right to inform itself by the best means available of the relative strength of competing suggestions. More delicate is the claim raised by South Australia that no South Australian should be recommended for a Commonwealth honour without the sanction of the State Government, for that involves an inroad on the right of the Commonwealth. The Government of South Australia also secured, on 25 September 1924, the passage of a Bill forbidding any recommendation by the Governor or any Minister of the bestowal of a dignity or title of honour save with the approval of both Houses of Parliament by resolution, but the Legislative Council threw it out on 2 October. The redoubtable Mr. Higinbotham<sup>3</sup> desired honours—apparently life peerages—to be bestowed by the Governor with the approval of the Colonial Parliament.

Dislike of honours as undemocratic occasionally appears in Parliamentary debates in the Colonies, as in New South Wales in 1882,<sup>4</sup> but little serious trouble arose. Sir W. Laurier<sup>5</sup> indeed was of opinion that no honours should be bestowed in Canada save on his recommendation as Prime Minister, representing the Government, but Mr. Chamberlain reminded him

<sup>1</sup> Biggar, ii. 601 f.

<sup>2</sup> *Canadian Annual Review*, 1908, p. 25.

<sup>3</sup> Morris, *Memoir*, pp. 209 ff.

<sup>4</sup> *Parl. Deb.*, 1882, pp. 460 ff.

<sup>5</sup> It appears from Skelton, ii. 276 ff., that his views varied. Finally (ii. 550) he recognized how wrongly he had acted in accepting his own title.

402. A 'power' is an individual personal capacity of the donee of the power to do some thing. *Ex parte Gilchrist*, (1886) 17 Q.B.D. 521.

But where a testator bequeathed his property to his wife and nephew's sons jointly and provided that the wife should manage it and after her death, his nephews should get it, and the nephews applied for limited letters of administration and claimed exemption of court-fee under s. 19-D of the Act read with Sch. III, Annexure B, it was held that the widow was an executor with life interest in the property and was a co-tenant with the claimants and was not a trustee in respect of their share and therefore the appellants were not entitled to exemption. *Mangaldas v. Secretary of State*, 52 B. 188 = 30 Bom. L. R. 54 = 1928 Bom. 55.

**Provident Fund.**—Though a private company which has created the Fund is in a fiduciary relationship with the depositor, still such a company cannot be deemed to be a trustee for the defendant or nominee of the depositor. The latter is not exempt from paying duty in taking out Letters of Administration to the estate of the deceased depositor. *In the matter of H. Hamilton King* deceased, 6 Rang. 558 = 1928 Rang. 312.

Provident Fund money does not form an asset of the estate of the deceased and passes to the nominee direct. Hence it is exempt from probate or administration duty. *Angus Mary v. James William*, 1925 Nag. 108.

**Property appointed by will** under a general power of appointment becomes assets of the appointer for the payment of his debts. *Beysfus v. Lawley*, (1903) A. C. 411. But property appointed by will under limited power of appointment is not regarded as the property of the appointer. *Commissioner of Stamp Duties v. Stephen*, (1905) A. C. 137.

**Property held with general power to confer a beneficial interest.**—Such property should be shown in Annexure B to the Act for the purpose of exemption from probate duty. This provision was inserted as part of Schedule III by Act XI of 1889, amending the Court-Fees Act, VII of 1870, and its purpose was apparently to give effect to the ruling of Couch, C. J., *In the goods of George*, 1870 6 B. L. R. (Appx.) 138 and *In the goods of Oram*, (1874) 21 Suths. W. R. 245, that the property the subject of a general power of appointment was not the appointer's property so as to be liable to probate duty under the Court-Fees Act. Couch, C. J., based his decision on the ruling of the House of Lords in *Drake v. Attorney-General*, (1843) 10 Cl. and Fin. 257. In that case property was vested in trust for the use of a daughter for life with power to her to appoint the property by will but expressly excluding from the benefit of that appointment certain named persons. It was held that the property was subject to a general power of appointment and was not liable to probate duty under the Stamp Act of 1815 as property which the appointer died

and their character must rest with the Imperial Government. In 1919, however, Mr. Nickle carried the matter further by proposing that no honours should henceforth be conferred on Canadians, and the Government had to fight hard to obtain, by 71 votes to 64, reference to a Select Committee. The report of that body was adopted on 14 May, after efforts had been made by the Government to secure some modification of its report, and was finally approved by the House by 96 votes to 43. An address was accordingly presented to the Crown, asking that the King might be pleased 'to refrain hereafter from conferring any title of honour or titular distinction on any of your subjects domiciled or ordinarily resident in Canada, save such appellations as are of a professional or vocational character or which appertain to an office'. It was further requested that every hereditary honour enjoyed by a person domiciled or ordinarily resident in Canada should be made to determine at his death. The Committee deprecated the use of foreign titles in Canada, approved of such military or naval distinctions as the Victoria Cross, and of the styles 'Right Honourable' and 'Honourable'. The resolution has been complied with by the Imperial Government so far as regards the cessation of granting honours, but nothing has been done regarding the hereditary titles, a curious commentary on the assertion of Dominion equality of status so often made in absolute terms. It must be added in fairness that Sir R. Borden must bear the responsibility for the original creation of these dignities, a *damnosa hereditas* to the Dominion. The strength of feeling in Canada was fully displayed in 1923, when Mr. J. Ladner<sup>1</sup> moved in favour of a restriction of the resolution of 1919 to permit of the conferring of decorations, not bearing titles, on those distinguished in literature, education, art, or science; the proposal, supported by Mr. Meighen, was negatived by 121 to 14, and it is extremely dubious if a majority could ever be found to renew the grant of titles.<sup>2</sup>

<sup>1</sup> *Canadian Annual Review*, 1923, p. 176. The high-minded among Canadian statesmen, like Mr. Fielding, have steadily refused these worthless decorations. The scandals accompanying the sale of honours in England are revealed in *Parkinson v. College of Ambulance*, [1925] 2 K. B. 1. It is difficult to understand the innate desire for these rewards.

<sup>2</sup> The Canadian bar in 1926 wisely declined to pass a resolution in favour of honours.

is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

#### COMMENTARY.

**Amendment.**—The words “for the local area” were substituted for the words “of the province” by the Repealing and Amending Act (Act X of 1901), s. 3 (1).

**Scope and application of the section.**—The section contemplates an application on the part of the person who had taken out probate and produces the same to be duly stamped. *Maneckji v. Secretary of State*, (1896) Bom. P. J. 751; *Nikunja Rani v. Secretary of State*, 20 C. W. N. 504=43 C. 230. The section further contemplates that the estimated value of the estate is less than what the value has afterwards proved to be. In the above cited decision of 20 C. W. N. 504, their Lordships observe thus: “In the present case there was no determination of the valuation by the probate court; there was on the one hand an estimate by the petitioner, there was on the other hand an assessment by the Collector which was not accepted as correct by the applicant; indeed she disputed the correctness of the grounds for the higher assessment. There was consequently no room for the application of section 19-E. If it was intended to take proceedings under section 19-E, as the petitioner disputed the correctness of the assessment by the Collector, the court should have been moved for an enquiry into the true value of the assets under section 19-H; and if the Collector had adopted such a course, it would have been incumbent upon him as explained in the case of *In the goods of Stevenson*, 6 C. W. N. 898 (1902) to make out a case for enquiry upon definite facts. No such step was however taken and it is plain that there was no compliance with the statutory requirements and that the contingency contemplated in section 19-E had not arisen”. See also 24 Mad. 241 as to the application of the section.

**Under-statement of value.**—The authority dealing with a question of under-statement of value, whether by fraud, negligence or mistake, should have regard only to the value of the estate at the time of the application for probate, and the fact of an estate being subsequently found to possess a higher value than that declared is not material except in so far as proof of higher value at a later date may be evidence of under-statement of the value, on the earlier date. *A. P. 265/1714 R.*, Mis., 18th November 1908.

persons had suffered loss from being associated in business with one whom they imagined to have been honoured for public service by the Crown. It must be recognized that Canada, before the resolutions of 1918 and 1919, was advancing to the position where the Government would have claimed as of right to have honours conferred, and, if this position had once been attained, it is clear that contributions to party funds would inevitably have been, as in the United Kingdom, raised by this means. However great the temptation thus to simplify the difficulty of securing funds for electoral campaigns, it may be hoped that the Dominions will take warning by the example of the United Kingdom, and by refusing to ape British practices preserve themselves from a grave source of corruption. Sir Wilfrid Laurier clearly recognized in later life that he had gravely erred in accepting an honour, and it is a matter for regret that the manly attitude of Mr. Mackenzie King on this head has elicited no sympathy either from Sir Robert Borden or from Mr. Meighen, whose frank desires in this direction reveal a curious human frailty.<sup>1</sup>

The honours conferred are, rarely, peerages, the best deserved being that of Lord de Villiers, Chief Justice of the Union ; baronetcies, of which the Union had five in 1925 but which have elsewhere been very rare ; knighthoods, frequently given to Agents-General and judges, who seldom receive the K.C.M.G. unless they administer, and the various grades of the Order of St. Michael and St. George, the K.C.M.G. being granted usually after a C.M.G., C.B., C.V.O., or a knighthood, and the G.C.M.G. after the K.C.M.G. Sir W. Laurier, however, declined<sup>2</sup> to take anything save the G.C.M.G., a step of which he professed regret in later life, while the K.C.M.G. may be given at once, as usually to Governors, while Governors-General obtain the G.C.M.G., practically as a matter of course ; the Labour Government in 1924 was guilty of the ludicrous absurdity of making Mr. J. O'Grady a K.C.M.G., though an obvious opportunity presented

<sup>1</sup> As in the United Kingdom, the episode of the acceptance by Mr. J. R. MacDonald of a life rent in £30,000 from a public benefactor whom he created a baronet caused an unfavourable impression in Canada ; see *Canadian Annual Review*, 1924-5, p. 56. It had evidently been held that public dignity was higher in England than in Canada.

<sup>2</sup> Skelton, ii. 69 f., takes too kindly a view of Sir W. Laurier's frailty (cf. ii. 277).

or more surety or sureties, engaging for the due collection, getting in, and administering of the estate of the deceased."

**19-G.** Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not within six months \* \* \* \* after the discovery of the mistake or of any effects not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment,

#### COMMENTARY.

**Amendments.**—The words "after the first day of April 1875 or " were repealed by Act X of 1901.

**Decision about inadequacy of court-fee.**—The decision of the revenue authorities could not be questioned in a civil court, *Manekji v. Secretary of State for India*, (1896) Bom. P. J. 751. But see 43 C. 230 cited under s. 19-E.

The question whether a certain property is or is not a trust property comes under s. 19-I and an order in respect of that property by a Financial Commissioner under s. 19-G without proceeding under s. 19-H is *ultra vires*. *Feroz A. Cooper v. Secretary of State*, 1928 Lah. 947.

**Requirements of the section.**—The lower court-fee must have been paid owing to mistake or ignorance that some property belonged to the estate of the deceased, and no application must have been made by the petitioner within six months after the discovery of the mistake. Else it will come under section 19-E (2). The penalty levied by the section is a forfeiture of Rs. 1,000 and a penalty of ten per cent. on the amount of the deficit court-fee. There is nothing stated about the balance of the deficit.

**Remission.**—The Chief Revenue Authority may remit in whole or in part the forfeiture of penalty provided by this section. See sec. 19-J.



upper chamber. All these may be regarded now as of Imperial validity, and will be recognized in the United Kingdom as opposed to the use of the style 'Honourable' by members of the first Commonwealth Parliament, which was conceded, but subject to specific local limitation by dispatch of 23 March 1904. Members of the Canadian Executive Councils in the Provinces, Presidents of the Councils, and Speakers hold the style during office only, but local courtesy gives it for life.<sup>1</sup> The claim of Canada for 'Right Honourable' for her Privy Councillors advanced in 1867 was negated on the score that it was the appropriate style of Imperial Privy Councillors.<sup>2</sup>

Judges of the Supreme Courts have the style 'Honourable' during office, and may be recommended for its retention on retirement.<sup>3</sup> Originally this was merely local, and Sir G. Grey in New Zealand<sup>4</sup> protested against this local limitation, but clearly without any right. The full recognition was delayed until 1911.<sup>5</sup> The style is applied to the judges of the Supreme Court of the Canadian provinces; in Canada the judges of the Supreme Court are officially referred to as 'their Lordships'.<sup>6</sup>

The Administrators of the Union provinces are styled 'Honourable'; Lieutenant-Governors in Canada 'His Honour'.

### § 3. *Salutes, Visits, Uniforms, and Medals*

Salutes are determined by the King under the prerogative; Governors-General, on first landing, on taking the oath of office, on leaving finally, or for a period of not less than three months, and on return from such leave, are entitled to 19 guns from the usual saluting battery; Governors must be content with 17, Lieutenant-Governors administering with 15. Similar salutes are due on visiting His Majesty's ships of war, or on arriving by one or leaving by one. Governors may also have the customary local salutes fired, on religious and other occasions, and at the opening or closing of Parliament, when, by

<sup>1</sup> *Canadian Annual Review*, 1905, p. 185.

<sup>2</sup> Pope, *Sir John Macdonald*, i. 391; ii. 4.

<sup>3</sup> *Victoria Leg. Ass. Journals*, 1877-8, App. B, No. 10; *Canada Statutes*, 1879, p. xli. So, e. g., Mr. Johnson in Newfoundland in 1926.

<sup>4</sup> *Parl. Pap.*, 1878, A. 1, pp. 15-18.

<sup>5</sup> *New Zealand Parl. Pap.*, 1910, A. 2, p. 74.

<sup>6</sup> Dropped in the Irish Free State, from the title Chief Justice; *J. O. L.* viii. ii. 40. For titles, see Const. Art. 5.

tion of the inventory required by section 277 of the Indian Succession Act, 1865, or, as the case may be, by section 98 of the Probate and Administration Act, 1881.

(5) The Court when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorized by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission) and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under subsection (5) shall be final, but shall not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19-E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

#### COMMENTARY.

This and Sections 19-I, J, and K which follow were inserted by the Court-Fees Amendment Act, XI of 1899, Sec. 2.

**Amendments.**—The words “for the local area in which the High Court is situated” were substituted for the words “of the province” by Section 3 (2) of the Court-Fees Amendment Act X of 1901.

**Notice of application.**—Notice of every application for probate or letters of administration has to be given to the Revenue Authorities and the section provides the means whereby they may check valuation and recover the proper fees. *In the goods of Bhuhaneswar Prasad.* 52 Cal. 871.

§ 4. *Precedence*

Precedence as matter of the prerogative is regularly laid down, not by Act, though this is clearly possible,<sup>1</sup> but by letters patent, royal warrants, royal instructions, or more simply through the Secretary of State. Tables of precedence for any Dominion may be formally drawn up and approved by the Crown, or rest merely on established usage. Thus the precedence of Canadian puisne judges was regulated by dispatch of 31 October 1878, but altered by another of 3 November 1879;<sup>2</sup> a Commonwealth list approved by the King appeared in the *Gazette* of 30 December 1905, one for the Union in the *Gazette* of 30 September 1910, and a new list for Canada appeared on 22 December 1923, in the *Gazette*. Members of the royal family take precedence after the Governor. British subjects who in the United Kingdom enjoy precedence by right of birth or dignity conferred by the Crown do not lose it by residence overseas, but the value of this peculiarly foolish principle is impaired by the fact that officials naval, military, or civil in the Dominions rank by their official position, and the wives follow their husband's precedence. The validity, however, of the rule is dubious in any case, for the law officers advised on 30 April 1859<sup>3</sup> that neither birth nor title conveyed any precedence outside the United Kingdom, and that it was proper for the Governor to arrange precedence in these cases according to local conditions. Official precedence in the United Kingdom or elsewhere has of course no effect, and it falls to the Governor to decide what, if any, he will accord. On occasion members of the royal family may be accorded precedence above the Governor, as was the Duke of York when he opened the Commonwealth Parliament in 1901, or the Duke of Connaught when he performed the same action for the Union Parliament in 1910; more anomalous was the precedence accorded to the Prince of Wales in 1907 when he visited Canada, and it seems now settled practice not to accord such special

<sup>1</sup> e. g., as to ministers *inter se* in New Zealand, No. 31 of 1920.

<sup>2</sup> For a Canadian list of 1893, see *Colonial Office List*, 1904, p. 479; cf. Sir John Macdonald's views (Pope, ii. 240, 330 f.); on consular precedence in Canada, see *Commons Deb.*, 1909-10, pp. 853 ff.; 1910-11, pp. 973 ff.

<sup>3</sup> South Australia, *Parl. Pap.*, 1871, No. 115.

**The Indian Succession Act.**—Section 277 of the Indian Succession Act (X of 1859) and section 98 of the Probate and Administration Act (V of 1881) are now merged in section 317 of the Succession Act (XXXIX of 1925). It runs as follows:—"An executor or administrator shall within six months from the grant of Probate or Letters of Administration or within such other time as the court which granted the probate or letters may appoint, *exhibit in that court an inventory containing a full and true estimate of all the property in possession and all the credits and also all the debts owing by any person to which the Executor or Administrator is entitled in that character.*"

**Sections 19-E and 19-I.**—The finding of the Civil Court under this section does not bar the entertainment and disposal by the Chief Controlling Revenue Authority of any application under section 19 E; and section 19-I provides that the grant of probate or letters of administration shall not be delayed by reason of any motion made by the collector under section 19-H. This is intended to safeguard against the danger of delaying administration.

**Instructions on the working of Section 19-H. [Bombay and Calcutta].**—Board's Circular Order No. 3 of March 1902. In continuation of Circular Order No. 11 of September 1900, the following instructions on the working of section 19-H of the Act are issued by the Board for the guidance of Revenue officers:—

1. The object of section 19-H of the Court-Fees Amendment Act XI of 1899 is to provide an effective procedure for checking the valuation of property in respect of which application has been made to any court for probate or letters of administration, and for defeating by this means any attempt at evasion of stamp duty.

2. The Collector need not enquire into all the cases of which he receives notice from Court. Sub-section (3) gives him a discretion, which he should exercise properly. The stamp-revenue should be protected, but care should be taken to avoid undue harassment of the petitioners for probate or letters of administration.

3. The High Court have directed the District Judges to send to the Collector a copy of the valuation of the property of the deceased together with the notice, if the valuation is filed as the same time as the application, or as soon as it is received, if it is filed on a subsequent date. This will relieve the Collector in most cases of the necessity of sending a subordinate to the District Judge's Court to inspect or take a copy of the record of the case. If, on inspection of the valuation received from the District Judge, and after obtaining any further information which may appear necessary, there is reason to think that the value of the property has been under-estimated, the Collector should make an enquiry.

Under sub-section (3), the Collector may require the attendance of the petitioner for probate or letters of administration if

1910 the Admiral in command of the British squadron was preferred to the Chief Justice. In Victoria and Tasmania,<sup>1</sup> however, no change was made. The Newfoundland Charter of Justice under 5 Geo. IV, c. 67, gives the Chief Justice and Judges precedence after the Governor, subject to the precedence of any persons who by law or usage take precedence of the Lord Chief Justice in England, so that the judges yield to a Premier only if a Privy Councillor. In New Zealand in 1903 the Premier was given precedence over the Chief Justice, and so in the Union in 1910, the Prime Minister in the United Kingdom having been given precedence in 1905 after the Archbishop of York.

In the Commonwealth precedence is confused by the existence of State and Federal lists, which do not accord. The Federal list places State Chief Justices below judges of the High Court, and Premiers below their Chief Justices, while the States claim rank for their Premiers above federal Ministers and for their Chief Justices just after the federal Chief Justice. Sensible persons stay away from functions where they do not receive the precedence they are foolish<sup>2</sup> enough to desire.

Among the Dominions the official order is based on date, Canada a Dominion on 1 July 1867; the Commonwealth, 1 January 1901; New Zealand, a Dominion on 28 September 1907; the Union, 31 May 1910, and Newfoundland, which with the others is a Dominion in the sense of the style given by the Colonial Conference of 1907, but freely adheres to the style of Colony, for which Island is a variant in the Governor's commission. Malta (1921) and Southern Rhodesia (1923) are Colonies, while the Irish Free State ranks as a Dominion, the most recent. In the Covenant of the League of Nations South Africa, by reason of population, is placed above New Zealand, with India following.

Among the Australian States the order of population is adopted for enumerations, New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania; in the case of Canada date of federation, Ontario, Quebec, Nova Scotia, New Brunswick, original members by population,

<sup>1</sup> See Act No. 1142, s. 11; 19 Vict. No. 23.

<sup>2</sup> For de Villiers' comic concern for his precedence as Chief Justice of the Cape under the Charter of Justice of 1834, see Walker, pp. 116 f.

tion, and should at once intimate his action to the Judge, with the request that he may be informed whether the amendment is made or not. Should the amendment not be made, the Collector may move the Court to make an enquiry.

If the valuation is amended as required by the Collector under section 19-H (3), but the additional fee is not paid into Court, or tendered to the Collector, the Collector shall report the case to the Board through the Commissioner for an order under section 19-G.

When after the completion of an enquiry by the court, any additional fee found due, or when after the passing of an order under section 19-G, any penalty or forfeiture adjudged, is not paid, the Collector shall apply, through the Commissioner, for a certificate of the Board under section 19-J.

9. A register of these cases should be kept in the Collector's office in the prescribed form.\*

For similar instructions in other Provinces, see the Stamp Manuals of those Province.

**19-I.** (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19-H, sub-section (1).

#### COMMENTARY.

**Grant of Probate or Letters of Administration.**—The section contemplates the prepayment of duty before an order for grant of probate is made. *In the goods of Omeda Bibi*, 26 C. 407=3 C. W. N. 392; *Nikunja Rani v. Secretary of State for India*, 20 C. W. N. 504=43 C. 230; *Swarnamoyee v. Secretary of State for India*, 43 C. 625; *Maung Ye Gyan v. Ma Hue*, 1 L. B. R. 228. But an executor cannot be compelled to pay probate duty until the

\* *Note.*—The register is meant for such cases only as are received from the Civil Court. An enquiry in another District under paragraph 6 of the Circular Order (No. 3 of March 1902) is subsidiary to the original proceeding. It does not initiate another original case under the Court-Fees Act, VII of 1870, as amended by Act XI of 1899, in the District in which enquiry is made. In such cases, it is a miscellaneous case only, and should find entry in Register 8.

and provides a national flag, the Union Jack with Dominion badge, for New Zealand. There is no such comprehensive rule for the Commonwealth,<sup>1</sup> though the Commonwealth flag is used by the military forces and Government offices. In Canada a proposal in 1925 to devise a distinctive flag was very badly received, and withdrawn by the Government, but in the Union, under the influence in part of the model of the Irish Free State, which at once adopted<sup>2</sup> a distinctive flag, on land, not at sea, it was agreed on 21 July 1925 to withdraw a proposal for a new flag merely in order to allow agreement on its design between the parties, to permit of its formal enactment in 1926. A bitter conflict ensued, the Labour party being gravely divided. It is clear that, as the badges<sup>3</sup> of the Dominions have always had the royal approval, as also in the case of their armorial bearings—often far from beautiful, so any flag designed should have royal sanction. In the absence of special arrangements the one Imperial flag is the Union Jack, which any British subject is at liberty to fly.<sup>4</sup> The royal power to appoint the Imperial flag rests on the Union Act as well as the prerogative.

The use of the royal arms by tradesmen who are favoured with the patronage of Governors is not rare in the Commonwealth and the Australian States, if permission is accorded by the Governor.<sup>5</sup>

<sup>1</sup> See *Debates*, 1908, p. 1791.

<sup>2</sup> Quite informally; Mr. Cosgrave (29 April 1926) declined to consider legislation. Grave unrest was caused in the Union; the Labour party was seriously split, and the Transvaal Nationalists denounced the Bill because it contemplated the use on Imperial anniversaries of the Union Jack also, and thus negated Republicanism.

<sup>3</sup> e. g. Canada's maple leaf was approved by dispatch, 30 April 1870, and New Zealand's fern leaves in 1908; *Canadian Annual Review*, 1910, p. 261; New Zealand, *Parl. Pap.*, 1908, A. 1, p. 17; a Canadian Coat of Arms by Proclamation of 21 Nov. 1921.

<sup>4</sup> Lord Knollys, 29 Dec. 1907, *Canadian Annual Review*, 1908, pp. 584 f.; 1910, pp. 261, 358; *House of Lords Deb.*, 14 July 1908. Canadian governmental offices in the United States and elsewhere use the Union Jack with badge.

<sup>5</sup> The King's permission is requisite for the use of the style 'royal'.

**Property outside Province.**—Inasmuch as the sum charged upon a grant of Probate or Letters of Administration is not a tax or duty levied upon the property upon which such Probate or Letters of Administration operates, but is a fee for the work done by the court, the court has the right to levy court-fee at the rate obtaining in that Province even though part of the assets for which probate is granted lies outside the Province. *In re Williams* deceased, 50 C. 597=1924 Cal. 115. As different scales of court-fees prevail in different provinces, it is an unsatisfactory state of things that fees have to be calculated as indicated above. It is desirable to make the fee uniform in all Provinces.

### **Annexure A.**

#### **(1) *Provident Fund Money.***

Moneys nominated in favour of a person, who was not dependant under the rules of the fund are the assets of the deceased subscriber and vest as such in the Administrator-General who had obtained a grant of letters of administration with the nomination form annexed. See *In the goods of Molloy*, O. P. No. 110 of 1921, Madras High Court. See also *Angus De Santos v. James William De Santos*, 82 I. C. 121=1925 Nag. 108 cited *infra*. See also *Secretary of State v. Mary Murray*, 33 C. W. N. 1148=1930 Cal. 252 and other cases cited under Sch. I, Art. 11 *infra*.

#### **(2) *Chose in Action.***

A person has a right or claim before the action which is determined by the action to be a valid right or claim. *Attorney-General v. Lord Sudelay*, (1896) L. R. 1 Q. B. 354. A right of action of the deceased which is maintainable by his executor or administrator is an asset. As to valuation of such right see *In the goods of Abdul Aziz*, 23 Cal. 577. In *Saldanha v. The Secretary of State*, 24 M. 241, it was held that the mere fact that an item of property was the subject of litigation did not in itself prevent the value of the property from being assessed for the purposes of stamp duty on the application for probate. But as in that case there was no means of determining the value of the right which the deceased was seeking to enforce in the suit, the petitioner's valuation might be accepted and no stamp duty levied, the estimate of the value in the case not exceeding Rs. 1,000. The High Court at the same pointed out that in cases of this sort, the revenue is protected by section 19-E of the Court-Fees Act, and the petitioner would accordingly be ordered on the termination of the litigation to file in court a statement showing its result.

#### **(3) *Compensation for accident.***

The Workmen's Compensation Act VIII of 1923, section 8 provides that compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner and any sum so deposited shall be apportioned among the dependants



general enactment was required. The New Zealand constitution had to be changed in 1857, 1862, and 1868. Legislation was necessary for Canada in 1871, 1875, 1886, 1895, 1907, 1915, and 1916; the Commonwealth would have welcomed it in 1917 if the Senate on party grounds had not refused to concur in asking for an extension of the duration of Parliament in this way. Colonial boundaries are clearly beyond Dominion control, and, doubts having been thrown on the prerogative right to change boundaries, especially if these were defined in an Act, the *Colonial Boundaries Act*, 1895, gave power to the Crown to change, with the assent in the case of the self-governing colonies, as they then stood, and validated *ex post facto* all changes already made; the transfer of territory to Natal from the Transvaal after the war of 1899–1902 was thus made. The Act now applies to the Commonwealth as a unit and to the Union.

Other Acts fall outside the scope of Dominion power; these include the Acts regulating the succession to the throne, the *Regency Act*, 1910, the *Civil List Acts*, the Act to alter the royal declaration on accession, the Acts to change the titles of the Crown. The Act of 1901 regarding the demise of the Crown, providing that no office should thereby be vacated, was expressed to extend to all the Dominions and elsewhere.<sup>1</sup> Moreover, it rests with the Imperial Parliament to regulate the relation of its laws to those of the Dominions, as in the *Colonial Laws Validity Act*, 1865, and to decide its own constitution as by the *Parliament Act*, 1911.

Acts justified both on grounds of uniformity and extra-territorial application include the *Fugitive Offenders Act*, 1881, which is based on earlier legislation and simplifies extradition between the several parts of the Empire; the utility of part ii allowing a simpler procedure by backing of warrants without the formal intervention of the Governor was seen in Australia before federation, and again in 1925 when the whole of the British Dominions in the Pacific were brought under its operation. Section 25 again validates the conveyance of a colonial prisoner between two parts of the colony even outside colonial waters. Part ii allows either of two colonies to exercise jurisdiction in respect of border offences, and penalizes perjury

<sup>1</sup> See 1 Edw. VII, cc. 4, 5, 15; 10 Edw. VII and 1 Geo. V, cc. 26, 28, 29; 39 Vict. c. 10; 17 Geo. V, c. 4; Proclamation, 13 May 1927.

of fee was in force the same must be applied even though before proof of the will, the scale was altered by an Amending Act.

**Alteration of value subsequent to application.**—Probate duty is to be levied on the value of the estate as at the time of making the application for probate. Subsequent depreciation of stocks and shares or accrual of dividends should not be taken into account. *In the goods of R. N. Clark*, 14 Lah. 526=1933 Lah. 936; *Emperor v. Stedman*, 12 Lah. L. T. 37; *In the estate of A. C. Mac Millan*, 14 I. C. 804. The court-fee ought to be levied in the first instance on the valuation put forward by the applicant for probate but the duty chargeable may subsequently be raised as a result of a reference made by the Collector under s. 19 H. *In the goods of R. N. Clark*, 14 Cal. 526.

**Duty of the civil courts, in respect of valuation.**—When an application is made for the issue of Probate or Letters of Administration, the Revenue Authorities get notice under S. 19-H; and it is their duty to satisfy themselves in the interests of Government that there is no undervaluation of the estate; and the duty of the court is only to satisfy itself that the proper fee as per the applicant's value has been paid. *In re Bhubaneswari Trugunait*, 52 C. 871=95 I. C. 529=1925 Cal. 1021. *In the goods of Aratoon Stephen*, 32 C.W.N. 799. See also B. P. 65/369 R. Mis., 30th March 1913 cited in Madras Stamp Manual, 4th Ed., p. 206. The grant cannot be delayed because the Collector has not made a motion under s. 19-H. *In the matter of will of Kritanta Kumar Bose*, 40 I. C. 576; *In the goods of Oomda Bibee*, 26 Cal. 407.

**Civil and Military Station, Bangalore.**—The Madras High Court exercises no jurisdiction over the assets of a deceased person within the limits of Civil and Military Station, Bangalore. Madras Board's Proceedings No. 1100 R. Mis., dated 17th September 1914. The Civil and Military Station, Bangalore, is foreign territory and part of the State of Mysore. *In re Hayes*, (1888) 12 M. 49.

**Application for prosecuting probate proceedings in forma pauperis.**—As O. 33, C. P. Code permits leave being granted for institution of suits alone in *forma pauperis*, it is for consideration whether applications for the grant of probate, or letters of administration or for the issue of succession certificate can be prosecuted in *forma pauperis*. This question arose in Madras in Application No. 2925 of 1930 (Madras High Court, unreported). That was an application for leave to conduct proceedings for the issue of probate in *forma pauperis*. Venkatasubbarao, J., held that such a petition will lie in view of O. 8, r. 14 of the O. S. Rules which refers not only to suits but also to proceedings. Therefore in view of the specific provision in the O. S. Rules, such an application is competent.

Apart from that, the view taken by his Lordship is that even under the Code, applications to sue in *forma pauperis* lie in the case

Air and shipping legislation for British ships wherever they are is clearly justified on territorial considerations; the concessions to the Dominions as regards registered and coasting vessels have been discussed above; the Act of 1894 provides for recognition by the Board of Trade of colonial examinations, and of colonial marked loadlines, which may be given validity throughout the Empire by Order in Council.

The *Army Act* and the *Naval Discipline Act* necessarily extend to the whole Empire, as the Imperial forces could not be permitted to fall under non-Imperial control, if they were stationed in any Dominion. The legal power to send them anywhere in the Empire is unquestioned, but constitutional practice demands that they should not be stationed in the Dominions except by their agreement; the case is different with the Irish Free State, where the Constitution and the Treaty of Peace contemplate clearly a legal obligation on the Irish Free State to afford defined facilities to the Imperial Government during peace, and much extended facilities in the event of war.<sup>1</sup> The relations of Imperial and Dominion fleets are regulated by the Conference agreement of 1911 and the legislation of that year above referred to. The *Army Act* similarly provides for the control of the Imperial forces throughout the Empire, but permits local legislation to alter minor points such as penalties &c.,<sup>2</sup> while by s. 177<sup>3</sup> it secures the extraterritorial application of local Acts if so provided, but otherwise subjects the colonial forces, if serving with regular forces away from the territory, to the *Army Act*. It is normally arranged that, when serving with Imperial forces outside the Dominion, the *Army Act* is applied in principle.<sup>4</sup> It is

which is only to extend to a Dominion with the assent of the Governor in Council. It regulates matters on the high seas beyond Dominion power of control. The Canadian legislation of 1923 and 1924 to implement the Halibut Fisheries Treaty with the United States is necessarily indirect in its operation.

<sup>1</sup> 13 Geo. V, c. 1, s. 1; Art. 7 of Treaty; Irish Free State Act No. 1 of 1922.

<sup>2</sup> *Army Act*, s. 169. For air forces, see 7 & 8 Geo. V, c. 51.

<sup>3</sup> See also s. 176 (11); 2 Geo. V, c. 5.

<sup>4</sup> But in the United Kingdom the *Army Act* rules; 9 Edw. VII, c. 3. Section 189 of the Act gives the Governor of a Colony where regular troops are serving power to place them on active service, subject to the approval of a Secretary of State. This was done in the Union in August 1914; Walker, *Lord de Villiers*, p. 601.

In this respect, it is unlike stamp duty or any other kind of tax or revenue due to the Crown. But in Chapter III-A there is provision for the collection of any deficient fee or duty in probate matters after the termination of the proceedings. Again once the suit terminates the court has no powers to determine the valuation thereof. But there are powers vested in the Revenue Authorities for moving the court for a revision of the valuation in probate proceedings even after their termination. Further where there is any deficiency of court-fee there is provision only for the collection of the deficiency. The penal provisions found under the Stamp Act are inapplicable to court-fees. But such penal provisions are found in Chapter III-A of the Court-Fees Act. These indicate that the duty leviable in respect of probate matters does not partake of the nature of court-fee. However there are decisions which take the view that it is in the nature of court-fee. In *In re G. T. Williams*, 50 C. 597, it was held that the sum charged upon a grant of probate or letters of administration is not a tax or duty levied on the property upon which the Probate or Administration operates but is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in this connection. At page 602 His Lordship Greaves, J., observes as follows: "Now it is quite true that duties which are collected by means of stamps are in a sense, stamp duties, for instances, in England, Estate Duty, Probate Duty and Succession Duty are stamp duties because they are so collected; but I feel very great doubt whether a court-fee becomes a stamp duty."

**Sub-s. (2)—Grant not to be delayed by Collector's motion under s. 19-H.**—The grant of probate cannot be delayed after payment of the requisite fee, by reason of any motion made by the Collector under s. 19-H. So also the grant cannot be delayed where the Collector has failed to make such motion. *In re Prasanna Moyee Basu*, 40 I. C. 576.

**19-J. (1)** Any excess fee found to be payable on an inquiry held under section 19-H, sub-section (6), and any penalty or forfeiture under section 19-G may on the certificate of the Chief Controlling Revenue-Authority, be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of British India.

(2) The Chief Controlling Revenue-Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19-E or of any court-fee under section 19-E in excess of the full court-fee which ought to have been paid.

Recovery of penalties, etc.

the Dominion forces during the war, the Imperial Government holding correctly that, whatever might be the power of the Dominions to legislate regarding mandated territory after it was mandated, they could have none before the mandate was conferred, and even then might have no retrospective power.

Other Acts can be explained partly as survivals from an earlier period, partly as due to special causes. The *Official Secrets Acts*, 1889, 1911, and 1920, are justified by the paramount interests of the Empire; provision is made for their suspension by Order in Council if local legislation of adequate nature exists. The *Customs Act* applies only where there is no Dominion legislation and is now inoperative in regard to the Dominions; it was vainly invoked in *Imperial Book Co. v. Black*.<sup>1</sup> The Act of 1853 regarding colonial coinage offences is now obsolescent, as are the old Acts for the punishment of colonial Governors, &c., who misuse their office;<sup>2</sup> those regarding leave of absence to colonial officers concern mainly the Governor in his relation to the Crown.<sup>3</sup> Of great interest is the Act which forbids the issue of *habeas corpus* to any territory where there is a court with power to issue such a writ, thus protecting Dominions from intervention by the English courts, which prior to the Act of 1862—passed at the request of Canada—were compelled to issue the writ even for persons overseas.<sup>4</sup> No longer would Parliament pass such provisions as those of 17 & 18 Vict. c. 80, s. 58, which make certificates of birth available in evidence in the Dominions; old-fashioned also are the Act of 1859<sup>5</sup> regarding the stating of cases by superior courts in the Empire in order to obtain an opinion of courts in other parts as to the law of those parts; the Act of 1859<sup>6</sup> regarding the examination of witnesses by one court in the Empire at the request of another; the Acts of 1856 and 1870<sup>7</sup> applying a similar principle to civil and criminal proceedings (other than political) for foreign courts. In these cases rules

<sup>1</sup> 35 S. C. R. 488.

<sup>2</sup> 11 & 12 Will. III, c. 12; 42 Geo. III, c. 85.

<sup>3</sup> 22 Geo. III, c. 75; 54 Geo. III, c. 61; 57 & 58 Vict. c. 17.

<sup>4</sup> *Ex parte Anderson*, 30 L. J. Q. B. 129; *R. v. Crewe, ex parte Selkome*, [1910] 2 K. B. 576; 25 & 26 Vict. c. 20.

<sup>5</sup> 22 & 23 Vict. c. 63; *Lord v. Colvin*, 29 L. J. Ch. 297. Cf. for foreign countries, 24 & 25 Vict. c. 11.

<sup>6</sup> 22 Vict. c. 20; 48 & 49 Vict. c. 74.

<sup>7</sup> 19 & 20 Vict. c. 113; 33 & 34 Vict. c. 52, s. 24.

the first and second schedules to the Act shall be filed, exhibited, etc., in any court of Justice or received by any public officer unless the proper court-fee is paid: and section 28 lays down that in cases where such insufficiently stamped documents have been received inadvertently, they are not to have any validity till properly stamped and the court or office could levy the proper stamp.

**Object of the section.**—"The object of this section is to avoid objection on the admissibility of the probate or letters of administration on the ground of improper stamp. It would be exceedingly inconvenient to make them subject to such objection. If the probate is insufficiently stamped or any fee is due, the Act makes provision for the Revenue Authority to realise the same." *Proceedings of the Legislative Council, Gazette of India, 18th Mar. 1899.*

**Exemption from fee.**—See section 19, clause VIII.

## CHAPTER IV.

### PROCESS-FEES.

Rules as to costs of processes.

**20** The High Court shall, as soon as may be make rules as to the following matters :—

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil [and Revenue] Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by the Local Government \* \* \* be published in the Local official Gazette, and shall thereupon have the force of law.

Confirmation and publication of rules.

dition of reciprocity, and legislation regulates relief from double income tax, on which a compact was reached in 1926 with the Irish Free State.

Other Acts simply deal with the conditions on which colonial stocks can be made trustee stocks,<sup>1</sup> which is permitted subject to undertakings to keep funds to meet any decrees made in England, and a declaration that any Act varying the security for the loan would properly be disallowed. Or the mode of proving colonial laws in court is specified.<sup>2</sup>

In yet other cases Acts are requisite as parts of a joint business, as in the case of those for the affairs of the Pacific Cable<sup>3</sup> and the administration of Nauru.<sup>4</sup>

Of recent origin is the type of general Act which permits adoption by the Dominions. The case of copyright has already been mentioned; more important and deserving special treatment is that of nationality.

The Dominions are also affected by certain Acts which penalize misdeeds of British subjects all over the world, e. g. as regards murder, bigamy, explosive substances, and certain cases of perjury, and Dominion British subjects are subject to Imperial legislation as to places where the Crown exercises extraterritorial jurisdiction.<sup>5</sup>

A curious use of the *British Settlements Act*, 1887, remains to be recorded. Under it authority has been given to the Governor-General of New Zealand to make rules and regulations for the peace, order, and good government of the Ross dependency, of which he is also created Governor. The question which inevitably is suggested by this Order in Council of 30 July 1923 is whether the delegation of power is *intra vires*. The Act expressly empowers the Crown in Council to establish 'laws and institutions' (s. 2), and to delegate to three or more persons within the settlement her powers in this regard (s. 3). The obvious conclusion from reading together these sections is that the legislative powers must be exercised either by Order

<sup>1</sup> 40 & 41 Vict. c. 59; 55 & 56 Vict. c. 35; 63 & 64 Vict. c. 62.

<sup>2</sup> 7 Edw. VII, c. 16.

<sup>3</sup> 1 Edw. VII, c. 31; 2 Edw. VII, c. 26, &c.; Cmd. 2769.

<sup>4</sup> Regulated by legislation in the United Kingdom, the Commonwealth, and New Zealand.

<sup>5</sup> See the Orders in Council for China, Persia, Muscat, Egypt, &c., e. g. the Siam Order in Council, 1926; Kuwait Order, s. 8.

**Object of the section.**—The section empowers the High Court to frame rules for the levy of fees for process in Civil, Criminal and Revenue cases. The procedure for the promulgation of such Rules is also detailed. For the Rules and schedule of Fees framed by the several High Courts, See Appendix.

**Amendment.**—The words “and sanctioned by the Governor-General of India in Council” in the penultimate paragraph of the section has been deleted. The rules do not therefore require the sanction of the Governor-General, see the Devolution Act XXXVIII of 1920.

In the Punjab, the word “and revenue” are repealed, see the Punjab Land Revenue Act, 1887 (17 of 1887), Punj. and N.W. Code.

**Local Investigation.**—A commission issued to an Ameen to make a local investigation is not a “process” within the meaning of the section. *Jagat Kishore v. Denonath*, 17 C. 281.

The Court-Fees Act distinctly contemplates that process peons are to be employed, not only for the service of summonses, notices and order, but also for the execution of other processes, such as warrants of arrest or of attachment, or of arrest and distress. The Nazir has authority to delegate the execution of a warrant to a peon. In this case the peon was assaulted and it was held that the accused was guilty of preventing the public servant in the discharge of his duties and the entrustment of the execution of the warrant was held proper. *Dharamchand v. Queen-Empress*, 22 C. 596.

In execution proceedings in a suit the Court deputed an Ameen to make local investigation and report about the mesne profits. He did. The decree-holder was asked to pay the process-fee and on his failure to do so the report of the ameen was not considered. “A commission is not a process within the meaning of S. 20 of Court Fees Act. ‘Process’ has a well-understood meaning within which a commission cannot be included.” A rule of the Calcutta High Court levying the process fee in such case was held *ultra vires*. *Jagat Kishore v. Denonath*, 17 C. 281.

### Process fees in consolidated appeals.

**Calcutta.**—Order 48 r. 1, C. P. C. gives power to the court to direct which party should pay the process fees and does not empower it to relax or reduce the fee payable. This was the view of the Calcutta High Court in *In the matter of application of Studd*, 26 C. 124. Their Lordships observed: “The court has no power to relax the process-fee rules in any way. Process-fees are levied under the Rules framed by the High Court in accordance with the provisions of S. 20 of the Court-Fees Act. These rules have the force of law and therefore must be followed, and though the High Court may from time to time alter and add to the rules it is necessary that these altered rules should before being put in force be confirmed by the Local



## NATIONALITY, NATURALIZATION, AND ALLEGIANCE

THE power of deciding as to British nationality might have seemed one essentially reserved to the Imperial Parliament, but in point of fact it was early recognized generally in an Act of 1847 that local nationality might be conferred by the authority of colonial Legislatures, and the principle was formally embodied in the *Naturalization Act*, 1870, and still stands in the Act of 1914. The position thus created differed essentially from naturalization in the United Kingdom, which, according to the better opinion, conferred the status of a British subject throughout the Empire, though this was doubted in the Dominions. A person naturalized colonially was not a British subject in the United Kingdom<sup>1</sup>—as many discovered in the war of 1914–19. Abroad he was held to be entitled to the good offices of British diplomats only as a matter of courtesy, which, however, in practice meant nothing disadvantageous. His complaint there was, of course, one common to persons naturalized in the United Kingdom. He might remain a subject of his former country and be reckoned there as not entitled to British protection. In the United Kingdom, however, he might have all civil rights like all other aliens, but he could not exercise the franchise, even if he had been a Minister in his own country like Sir G. Perley in Canada; he was not eligible for the Privy Council or the peerage; he could not enjoy the benefits of the *Wills Act*, 1861, nor the *Foreign Marriage Act*, 1892. On the other hand he was exempt from the penalties imposed by 24 & 25 Vict. c. 100, ss. 9 and 57, on British subjects committing murders or bigamy abroad; from certain sections (686, 687) in the *Merchant Shipping Act*, 1894, the *Perjury Act*, 1911, the *Explosive Substances Act*, 1883, the *Foreign Enlistment Act*, 1870, and the law of treason (35 Hen. VIII, c. 2), or the *Official Secrets Acts*, 1911 and 1920. He was not entitled to the benefit of clauses in extradition treaties entitling a power to refuse to surrender nationals. He was not a British subject in places

<sup>1</sup> *Markwald v. Attorney-General*, [1920] 1 Ch. 348; *R. v. Francis, Ex parte Markwald*, [1918] 1 K. B. 647.

Courts. *Narayan Kalu Chambhar v. Bayaj Appa Sanawane*, 28 Bom. L. R. 1191.

**Appeals before Special Judge.**—The scale of process fees in such appeals is that prescribed in rules framed under the section as the Court of a Special Judge is a civil court within the meaning of the section. R. 65 of the rules framed by the Government under s. 189 of the Bengal Tenancy Act is not applicable to such a case. *Charusila Dasi v. Government Pleader, Birbhum*, 58 C. 995 = 1931 Cal. 572.

**21.** A table in the English and Vernacular languages, showing the fees chargeable for such service and execution shall be exposed to view in a conspicuous part of each court.

Table of process fees.

Number of peons in District \* and subordinate courts.

**22.** Subject to rules to be made by the High Court and approved by the Local Government \* \* \* ,

every District Judge and every Magistrate of a District shall fix, and may from time to time, alter the number of peons necessary to be employed for the service and execution of processes issued out of his court and each of the courts subordinate thereto,

and for the purposes of this section, every court of Small Causes established under Act No. XI of '865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*) shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Mofussil Small Cause Courts.

#### COMMENTARY.

**Amendment.**—The sanction of the Governor-General in Council for the validity of the Rules is no longer necessary, the words "and the Governor General of India in Council" having been deleted by the Devolution Act XXXVIII of 1920.

#### Rules.

For rules made under the powers conferred by this section in—

*Ajmer-Merwara* . . . see Aj. R. and O., Vol. I.

English, and intend to reside in the British Dominions, or serve the Crown. *Mutatis mutandis* the same power is enjoyed by the Government of any British possession, and a person so naturalized is given the full status of a natural-born British subject. But this applies in the case of the Dominions only if the Dominion adopts part ii of the Act of 1914. A minor may be included in his parent's certificate, and a woman who lost nationality by marriage, and whose husband is dead or who is divorced, may be given a certificate without residential qualification. The Act has only slowly been adopted<sup>1</sup> by Canada,<sup>2</sup> the Commonwealth,<sup>3</sup> Newfoundland, but not by New Zealand, and the Union of South Africa only acted in 1926. The Act still binds the Free State pending legislation; it applies automatically to Malta and Southern Rhodesia. Any Dominion may repeal its adherence, but with due respect to acquired rights. In any Dominion where a second official language exists, it may be accepted in lieu of English. Nothing prevents the differential treatment of different classes of British subjects as to immigration or otherwise, a provision intended to calm the fears of those who thought that the new measure might give British naturalized subjects an indefeasible right of entry.

The Act of 1914 is also notable for defining, with Imperial validity and without any saving for the Dominions, the circumstances which go to make up a natural-born British subject. A man is a natural-born British subject if he is born within His Majesty's Dominions and allegiance—this term excluding children of foreign diplomats and alien invaders; even if born outside the Dominions, a man who is the son of a living father being a British subject, is himself a British subject, if his father was (a) born within the allegiance, i. e., on British territory or in a place where extraterritorial jurisdiction is exercised by the Crown; or (b) was naturalized, or (c) became a British subject by reason of annexation of territory, or (d) was serving the Crown when his son was born, or (e) if his own birth is registered at a British

<sup>1</sup> Nothing had been done in 1926 to define the position of the Irish Free State, which can, if it wishes, put itself in the position of a Dominion.

<sup>2</sup> By Acts of 1914, 1920, and 1923, the last of which repealed s. 7 of the Act of 1920 prohibiting naturalization of former enemy aliens without ten years' residence.

<sup>3</sup> The *Nationality Act*, 1920-25; No. 48 of 1920; No. 24 of 1922; No. 10 of 1925.

Central Provinces. *see* Cen. Prov. Gazette, 1905, Pt. III, p. 570.

Madras . . . *see* Mad. R. and O. Vol. 1.

As to Burma *cf.* S. 41 of the Lower Burma Courts Act, 1900 (6 of 1900).

**24.** [*Process served under this chapter to be held to be process within meaning of Code of Civil Procedure.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

## CHAPTER V.

### OF THE MODE OF LEVYING FEES.

**25.** All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Collection of fees by stamps.

### COMMENTARY.

**Court-Fee stamps**—The Court-fee leviable should always be collected in court-fee stamps.

**Exemptions in Madras.**—For cases where payment may be made in cash to officer of court *see* Rule 170 (1) of the C. R. P. and C. O. of the Madras High Court, Vol. I.

**Denomination of stamps.**—When stamps of full value are available, parties should use as few a number of stamps as possible 16 W. R. 152; but there will be no illegality in making of the full duty by a number of stamps of smaller value 16 W. R. 153; 17 W. R. 220, 12 W. R. 449. For further rules on this point *see* Appendix. But it is a common knowledge that the rule is rarely strictly observed. The following decision of the High Court of Patna will come as a surprise to those who tacitly ignore the departmental instructions regarding the use of a single stamp or as few stamps as possible instead of a plurality of stamps of trifling value. In *Jange Pande v. Sundagar Singh*, 1931 Pat. 113 a plaint was presented in a Small Cause Court with two stamps one of Rs. 20 and the other of Rs. 10. The plaint was returned with a direction to file a fresh single court-fee stamp of Rs. 30 and it was accordingly done. The plaint was returned even though a certificate from one stamp vendor was filed that a single stamp for Rs. 30 was not available and it was held that the plaintiff should have tried other stamp vendors in the same locality and the court's action was justified as correct. Then when the plaintiff applied for refund of the value of the Rs. 20 and Rs. 10 stamps originally filed by him, it was held that the application should be to the Revenue authorities and that the court should ordinarily grant a certificate setting out the facts in the form issued in 40 C. 365.

provisions as to aliens which give them the right to hold real and personal property, though there is a limitation to the United Kingdom in the case of land, or require them to be tried in the same way as British subjects. It is true that these sections appeared in the Act of 1870, but it was not there clear, as it is now, that they applied to the Dominions. There is a saving of Dominion legislative authority in s. 26 which may validate any legislation there denying to aliens the same rights as to personal property as are given to British subjects, but the enactment in the Imperial Act is clearly too wide.

In New Zealand the *British Nationality and Status of Aliens (in New Zealand) Act*, 1923,<sup>1</sup> declines to recognize the Imperial Act as binding, and in lieu inserts in a schedule the main portions of parts i and ii of the Imperial Act which are declared to be operative with modifications, involving restrictions on the right of aliens in respect of property, including the express provision that s. 17 of the Imperial Act is not to be regarded as affecting New Zealand enactments restricting trade with enemy nationals. The validity of these modifications is far from obvious, for Sir F. Bell's view that there is any ambiguity in the application of the Imperial Act, except part ii, to the whole Empire is clearly and indisputably wrong. As regards naturalization the Act declares<sup>2</sup> that naturalization in any other part of the Empire confers no rights in New Zealand, a somewhat truculent refusal of reciprocity, and it may be added a rather gratuitous one. Moreover, the Act declines absolutely to limit the discretion of the Minister or the Governor-General in Council to revoke at will any certificate of naturalization, thus departing definitely from the scheme of the British Act, which in certain cases definitely requires a careful inquiry before revocation, thus precluding the operation of the Imperial Act. It may be hoped that wiser counsels will ultimately prevail, as the advantage of uniformity in legislation is clear. New Zealand still clings to a period of three years for her own local naturalization, which cannot be recognized in other parts of the Empire and is manifestly too short.<sup>3</sup>

<sup>1</sup> No. 46 of 1923 ; Sir F. Bell, Leg. Council, 12 July 1923.

<sup>2</sup> s. 3 (3). It was apparently admitted on 18 Sept. 1925 in the Lower House that this went too far.

<sup>3</sup> The New Zealand *Revocation of Naturalization Act*, No. 8 of 1917, though

Provided that in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the local official Gazette and shall thereupon have the force of law.

#### COMMENTARY.

**Use of stamps of small denomination.**—Making up the total court-fee payable by a number of stamps of small value, is not illegal. *Mirza Dawd v. Syed Nadir*, 16 W. R. 153.

Where the appellant being unable to procure one stamp filed his appeal with two labels with a certificate by the treasurer that single label was out of stock but the District Judge rejected the appeal, it was held the appeal should not have been dismissed. (1887) 7 All. W. N. 212. But see *Gangi Pande v. Saudagar Singh*, 1931 Pat. 113 set out at length under s. 25 *ante*. Where the fees were not denoted in the manner prescribed by the rules under this section, the document can be treated by the court as unstamped. *Tota Rajayya v. Margoni Rajmalaya*, 1931 Nag. 91.

**Rules.**—For rules framed under this section by the several Local Governments, see Appendix.

**Damaged and spoiled stamps.**—For recovery of the value of such stamps and the procedure to be followed see the Stamp Manual of each province.

**28** No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping documents inadvertently received.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

#### COMMENTARY.

**Sections 4 and 6.**—This section is to be read with sections 4 and 6 of the Act.

domicile was given artificially to those who had for three years had domicile in Canada, in order to get over the difficulty that in private international law domicile is acquired by mere settlement in Canada with the intention of remaining there. This was modified as regards wives and children never landed in Canada, that they should not obtain Canadian citizenship merely because the husband or parent had attained that citizenship. But citizenship existed only for the purpose of the Immigration Act.

In 1921 (c. 4) Canada made an important change ; under the statute creating the Permanent Court of International Justice each member obtained the right of having indirectly two members of its nationality put forward as candidates for the Court. But two members of the same nationality could not be elected, and it was, therefore, necessary to secure that, if a Canadian nominee should be elected and also a British nominee, both could take their places. For this purpose Canada decided to legislate to define Canadian nationals. The Act provides for the Canadian nationality of (a) any British citizen within the meaning of the *Immigration Act* ; (b) the wife of any such citizen ; (c) any person born out of Canada, whose father was a Canadian national at the time of his birth, or, in the case of any one born before the Act, would have been a national had the Act then been in force. Any Canadian national may, if born in Canada and also a national of the United Kingdom or a Dominion, or if born elsewhere but a Canadian national, if he desires, renounce his nationality by declaration. The new status, of course, has no effect on the character of a Canadian national<sup>1</sup> as above all first a British subject, but it recognizes the measure of distinction within the Empire arising from the position of the Dominion in the League of Nations. Similar provisions were inserted in the South African Nationality and Flag Bill of 1925 and 1926, and in the measure of 1927.

In the case of the Irish Free State the status of citizen is conferred on every person domiciled within the Free State at the time of coming into operation of the Constitution, who was

<sup>1</sup> The provision as to being a national of the United Kingdom, of course, applies to every British subject as matters now stand. The rule might have meaning if the United Kingdom started United Kingdom nationals, which is undesirable.

Act should not be tolerated. If a litigant has not got sufficient money ready to pay the whole court-fees, the whole appeal ought to be filed when such court-fees have been made good accompanied with an application for extension of time. But the filing of an insufficiently stamped appeal knowing it to be defective should not be permitted. No doubt the Bombay High Court has held that an appellate court is bound to accept an insufficiently stamped memorandum of appeal and to grant time to make it good. *Achut Ramachandra Pai v. Nagappa*, 38 Bom. 41 = 21 I. C. 337. But this view has not been followed in Patna in *Ram Sahay v. Laksmi Narain*, 42 I.C. 675, nor by the Lahore High Court in *Lekhram v. Ramji Das*, 1 Lah. 234 = 57 I.C. 215. The Madras High Court has also dissented from the Bombay view. *Narayana Rao v. Seshamma*, 27 M. L. J. 677 = 26 I. C. 33. Section 149 Civil Procedure Code no doubt gives a court power to allow deficiency to be made good in its discretion. The concession cannot be claimed as of right." His Lordship then referred to the provisions of s. 4 of the Court-Fees Act and stated that a deliberately insufficiently stamped memorandum of appeal must not be filed. The Lahore High Court also has held that where the provision of law is quite clear and there is no *bona fide* mistake the Court may refuse to grant time to a party to pay the deficient court-fee on a memorandum of appeal. *Mahomed Suleman v. Ghumandi Lal*, 1931 Lah. 343. See also the commentaries under Ss. 4 and 6 on the point.

In *Mahadei v. Ramakrishen*, 7 All. 528, the judges of the Allahabad High Court differed as to whether the order calling for the deficit court-fee can be made after the final disposal of the case or appeal. Muhammad, J., held that it could not be done, while Oldfield, J., held contra. For a fuller discussion see commentary under s. 12 *supra*.

**Rejection of plaint or memorandum of appeal.**—The power of court is set out in O. XLI, r. 3, Civil Procedure Code and by s. 149 the court may in its discretion allow time to make up the deficiency of court-fees.

Section 28 of the Court-Fees Act is subject to the provisions of the Civil Procedure Code and it was held in 38 Bom. 41 already quoted that a court cannot reject a memorandum of appeal insufficiently stamped without giving the party an opportunity to make up the deficiency. The contrary view and the case law bearing on the subject has been fully set out in the extract from the judgment of Sulaiman, C. J., quoted above.

As to whether there is to be a rejection of the plaint under O. VII, r. 11, C.P.C. or dismissal of the suit, see discussion under the heading 'Rejection or Dismissal' under s. 12 *supra*.

If a plaint not properly stamped is presented to the court not having jurisdiction and is subsequently returned for presentation to the proper court, the latter court is not bound to treat the plaint as



## THE DOMINION MANDATES

§ 1. *The Mandatory System*

THE Dominions<sup>1</sup> were naturally anxious to obtain in full sovereignty the territories of Germany occupied by them in the war, but President Wilson's intervention resulted in the decision that the mandatory system—which General Smuts had devised for the Turkish Dominions and Austria-Hungary—should be applied to these possessions also. But the objections of the Dominions had the effect of bringing about extensive modifications in the system originally proposed, and as a result there are now recognized three classes of mandates. Those of 'A' type are essentially instances of administrative advice and assistance for parts of the Turkish Empire contemplated in Article XXII of the Covenant of the League, though both the United Kingdom and France have assumed much more authority than these words imply in respect of Iraq, Palestine, Transjordan, and Syria. The second class, 'B' mandates, covers peoples

at such a state that the mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or naval and military bases, and of military training of the natives for other than police purposes and the defence of the territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

These terms were originally proposed for the Dominion mandates, but at their instance the position was modified to provide as follows :

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population or their small size or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the

<sup>1</sup> Keith, *J. C. L.* iv. 71-83 ; *War Government of the Dominions*, pp. 180-95.

for consideration whether O. VII r. 11 (c) may not well be repealed as its enactment is responsible for a good deal of conflict of decisions and has been generally abused by the parties.

As regards the original side of the High Court, O. 49, R. 3 (1) C. P. C. makes O. VII r. 11 (b) and (c) inapplicable to plaints presented to the High Court. The apparent reason is that *ad valorem* court-fee was not leviable in the original side for suits. Now at least in Madras the fees rules do levy *ad valorem* court-fee. Under these circumstances it is for the Rule committee to see to the amendment of O. 49 r. 3 (1) C. P. C. As it stands now, a plaint on the original side cannot be rejected for non-payment of deficit court-fee unless it be the court invokes its inherent powers. If it so invokes, then it can reject a plaint untrammelled by the implied condition precedent engrafted on s. 149 by O. VII r. 11 (c) namely the grant of time to make good the deficiency. It is submitted it is high time these anomalies are rectified and the procedure made uniform in all these cases.

**Insufficient court-fee and amendment of plaint.**—The plaintiff filed a suit on a promissory note on the last day of limitation. The plaint having been insufficiently stamped the court allowed the plaintiff 10 days to make up the deficiency and returned the plaint. Within that time the plaintiff reduced his claim and represented the plaint. It was held that where a plaint is returned the permission of the court to amend the plaint is unnecessary and that it was open to the plaintiff to relinquish any portion of the claim in order to bring it within a certain court-fee and as the plaintiff in the particular case represented the plaint as amended within the period allowed by the court, the suit could be maintained. *Per* Jackson, J., in C. R. P. 1825 of 1927, M. L. J. Notes of cases Vol. 61 July Pt. 4.

**Improper valuation of claim. Amendment ousting jurisdiction of court.**—Where a court finds that on a correct valuation the plaint is not cognizable by it, the proper thing to be done is to return the plaint so that it may be presented to the court having jurisdiction. It will be time enough for the court having jurisdiction to entertain the plaint to consider whether the proper court fee has been paid, and if not paid, to proceed in accordance with powers conferred upon it by law, for that purpose. Where the court finds it has no jurisdiction, it cannot ask the plaintiff to amend his valuation with a view to direct him to pay additional court-fee and then return the plaint. *Satti Ramanna v. Padula Amireddi*, 61 M. L. J. 43.

**Memorandum of appeal.**—Where in a pre-emption suit the defendants admitted the plaintiff's right to pre-emption but put a higher market-value than what the plaintiff alleged and the defendant's value was accepted by court and a decree was passed, the plaintiff appealed alleging that a smaller amount alone should have been allowed to the defendant as the proper market price and paid court-fee on that amount alone it was held that the court could not

military or naval bases shall be established or fortifications erected in the territory. Subject to any local law for public order and morals, the mandatory must ensure freedom of conscience and free exercise of all forms of worship, and shall allow all missionaries, nationals of any state member of the League, to enter into, and travel and reside in, the territories in the prosecution of their calling. An annual report must be made to the Council of the League to the satisfaction of the Council, containing full information with regard to the territory and indicating the measures taken to carry out the obligations assumed under the articles above set out. The consent of the Council is requisite for the modification of the terms of the mandate, and it is agreed that, if any dispute whatever should arise between the mandatory and another member of the League relating to the interpretation of the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice.

To the terms of these mandates, when they were being approved by the Council on 17 December 1920, the allocation having been made by the principal allied and associated powers in accordance with the Treaty of Peace, Japan presented a formal objection. It was pointed out that under the principles of the Covenant and under its actual terms Japan considered herself entitled to demand the insertion of provisions for equality of trade and commerce in the mandates, but from a conciliatory spirit she consented to their issue without such clauses, reserving, however, the point of view that the rights of her subjects in the mandated territories as enjoyed before the war should be respected. A somewhat similar protest was made by Mr. Sastri in 1921 at the meeting of the League Assembly regarding discrimination by excluding Indians from South-West Africa. It is a fact that both foreign States and other parts of the Empire have suffered loss by the transfer of these territories to the Dominions, for the régime of Germany in many respects was of a more generous and enlightened nature as regards external trade and immigration.

The mode of supervising the carrying out of the mandates was decided by the Council which issued on 1 December 1920 a statement of the constitution of a Permanent Mandates Com-

tion and court-fee was payable under the amended Act. The plaintiff would be credited with the amount already paid and was to pay the balance. *Bangla Press v. Lalmoni Devi*, 30 C. W. N. 91. No institution court-fee need be paid when a suit which was instituted before a settlement officer under the provisions of Regulation III of 1911 was transferred to a civil court under s. 5 of the Regulation, *Bibee Golip Kumari v. Mahomed Kadirudin*, 12 C. W. N. 917.

Where the court returns a plaint under O. VIII, r. 10, C. P. C., it is not acting under s. 30 of the Court Fees Act. The plaintiff is not liable to pay the stamp once more. A document does not cease any the less to be a properly stamped document by the cancellation of the stamp. It continues to be properly stamped. By cancellation the stamp cannot be used again, but when a document which is the plaint in one court is rightly presented in another court as a plaint in another court it is not being used again. The cancellation in such cases must be taken to have been set aside by reason of the subsequent order returning the plaint. *Visweswara v. T. M. Nair*, 35 M. 567 = 10 I. C. 201 = 21 M. L. J. 533 = 1917 Mad. 257; *Ganesh v. Tatyia Bhamappa*, 51 B. 236 at page 239; *Prabhakarbhaj v. Vishwambhas Pandit*, 8 B. 313 (F. B.)

**Rules.**—For detailed rules regarding the cancellation of Stamps, See Appendix.

## CHAPTER VI.

### MISCELLANEOUS.

#### 31 *Repealed.*

This section has been repealed by s 163 of the Criminal Procedure Amendment Act 1923 (Act XVIII of 1923) and s. 546-A has been substituted for it in the Criminal Procedure Code. It runs as follows :—

“546-A (1). Whenever any complaint of a non-cognizable offence is made to a court, the court if it convicts the accused, may in addition to the penalty imposed upon him, order him to pay to the complainant—

Order of payment of certain fees paid by complainant in non-cognizable cases.

- (a) the fee (if any) paid on the petition of the complainant, or for the examination of the complainant, and
- (b) any fees paid by the complainant for serving processes on his witnesses or on the accused, and may further order that in default of payment, the accused shall suffer simple imprisonment for a period not exceeding thirty days.

Covenant. The permission given to the Union<sup>1</sup> by the *South-West Africa Naturalization of Aliens Act*, 1924, to turn all German subjects who did not object into British subjects in the Union meant definitely the reassertion of the doctrine of Germany that the territory exists for European exploitation of the natives. There is more hope for the natives in Samoa and New Guinea, for neither territory offers room for white settlement of the type in South-West Africa, and from both lands the removal of the German population has been in the main carried out. In the case of Nauru the fact that the British Empire appropriated the valuable phosphate deposits was a source of much comment in League circles, but it was justly pointed out that the phosphates were being exploited legally under a German authority by the Pacific Phosphate Co., which was bought out by the Governments of the United Kingdom, Australia, and New Zealand for £3,500,000, the sums being contributed in proportions of 42, 42, and 16 per cent. There remains, however, the grave difficulty that the Governments are vitally interested in the export of phosphate and that this interest cuts across the protection of the natives. The objection is in practice mitigated by the fact that the people draw considerable revenues from the exploitation of the phosphate, which give them adequate comfort at present.

The Empire showed its unity in its action in November 1926 in sending a collective reply, for New Zealand, for Australia, and South Africa, as the outcome of discussions at the Imperial Conference, to the League of Nations on the subject of the questionnaire of the Mandates Commission. It was felt by the Governments that the questions were too detailed, and that in addition there was the strongest objection to the proposal of the Commission to receive evidence from petitioners who alleged the existence of unsatisfactory conditions in the mandated territories. It is easy to understand that fear of German claims for the return of New Guinea and dislike to agree to inquiry into the management of the natives in South Africa motivated the Dominion Governments, but the fact remains that the Commission seems to have been well within its rights in its proposal, and that the error, if any, of the Empire Governments was in agreeing to the mandates system in lieu of insisting on

<sup>1</sup> Cf. *B. Y. B. I. L.*, 1925, pp. 188-91.

not be added to the fine imposed to take it out of the operation of s. 413 Criminal Procedure Code which prohibits appeals in petty criminal cases. *Marion Mundal v. Haran Ganesa*, 27 C. 537; *Emperor v. Karuppan*, 20 M. 155; *In re Vemuri Seshamma*, 25 M. 421. Consequently an appellate court cannot set aside an order of the trial magistrate passed under the section. *Emperor v. Maddipatla Subbarayadu*, 31 M. 547.

**Section 545 of the Criminal Procedure Code.**—The provisions of s. 545 do not govern the provisions of s. 31 of the Court-fees Act (now s. 546-A, Cr. P. C.). *Queen-Empress v. Yamana Rao*, 24 M. 305.

**Complaint not required to be stamped.**—If a complaint has been unnecessarily stamped, such an illegal levy of court-fees cannot be directed to be refunded by the accused on conviction. *Empress v. Khajabhai*, 15 M. 430.

**Cognizable case.**—In a cognizable case it is inequitable to order the accused to pay the costs of the complainant. *Maung San Mylin v. King Emperor*, 1923 Rang. 245. Payment can be ordered only when the offence is non-cognizable. *Mingam v. Emperor*, 1922 All. 86.

**Offence.**—Section 4 (c) of the Criminal Procedure Code defines an offence as follows: "Offence means any act or omission made punishable by any law for the time being in force; it also includes any act in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act, 1871." See also the definition in s. 3 (37) of the General Clauses Act X of 1897, and s. 40 Indian Penal Code and s. 4 Indian Penal Code, Explanation which says that the word 'offence' includes every act committed outside British India which if committed in British India, would be punishable. Consequently all complaints of offences under special or local Acts if non-cognizable are liable to court-fee and come within the operation of s. 546-A, Criminal Procedure Code.

**Discretion of court.**—Under the repealed s. 31 the court was bound to order the refund of court-fee and now is given the discretion to order the payment or not.

**Mode of realization.**—It is provided in sub-clause (b) that the court may order that in default of payment the accused may be ordered to suffer simple imprisonment for a period not exceeding thirty days.

**"May be recovered as if they were fines."**—The making of an order under s. 31 does not ordinarily amount to an enhancement of sentence but may be made as an incidental order to bring the judgments into conformity with the law. The section does not make the fees ordered to be repaid part of the sentence. *Thimmiah v. Emperor*, 47 M. 914—1925 Mad. 136

goes further in forbidding all forced labour, thus evading serious disadvantage. Commonwealth Acts do not apply to the territory save if expressly made applicable by the Act or by ordinance. By the *Laws Repeal and Adopting Ordinance*, 1921, German law was swept away, and in lieu statutes and the principles of the English common law and equity were introduced, subject to modification by ordinance. The Ordinance further assured the natives of their existing land rights, and their rights as to cultivation, barter, hunting, and fishing, and provided that tribal institutions, customs, and usages should continue so long as not repugnant to humanity or express enactment, and an Ordinance of 1924 makes wise and suitable provisions for securing the due observance of native usage with respect for the rights of superior education. The land of the territory, formerly owned by German companies and private persons, was expropriated under the terms of the Treaty of Peace in 1920 and 1925; sale of it has been sanctioned, but normally land, where not in native ownership, is offered only on leasehold tenure. Educative and health efforts for native benefit are undertaken.

### § 3. *The New Zealand Mandate*

The mandate for Western Samoa presented more difficulties to New Zealand, which had been in occupation since 29 August 1914 under martial law. An Act of 1919 was passed to enable the mandate to be accepted from the League of Nations and to authorize the issue of Orders in Council for the government of the island. There being no clear authority thus to legislate, it was decided to obtain an Imperial Order in Council of 11 March 1920 issued under the *Foreign Jurisdiction Act*, 1890, and any other prerogative powers authorizing New Zealand to legislate for Samoa. This was carried out in detail by the Samoa Constitution Order, 1920, but this was replaced by the *Samoa Act*, 1921. By this measure the government of Western Samoa is vested in the King as if it were part of his Dominions. The executive control is vested in an Administrator, appointed by the Governor-General and acting under the control of the Minister for External Affairs. A Samoan Treasury is provided for, and departments of education and public health and a public service. Legislative authority is given to the Governor-

he was right. *George Gerson v. Radha Krishna* 6 Cal. W. N. 785. The practice amongst attorneys to accommodate each other in respect of unused stamps was deprecated.

"*Sells or offers for sale.*"—A thief selling a stolen stamp could be prosecuted under this section, *Queen Empress v. Virasami*, 24 M. 319, although such person cannot give a legal title in regard to the stamp.

*Exchange of stamps.*—A pleader having an unused stamp giving it to another on the understanding that the latter is to deliver a similar stamp later on commits no offence under this section. *Keder Nath Saha v. Emperor*, 30 C. 921.

The case of a mukhtear who purchases a court-fee stamp for a client and transfers it to another client is not covered by this section. Where a pleader instead of obtaining refund on a stamp altered the name on the stamp and used it for another client, for the first time, it was held that no prosecution lies under s. 468, I. P. C. and this section, in the absence of proof that he acted dishonestly or fraudulently. *Emperor v. Abdul Hakim*, 1931 Lah. 337.

This section does not prohibit a pleader or banker purchasing stamps in bulk and affixing them to the documents as and when occasion arises. (C. P. circular dated 21-10-1895).

A person can make a gift of court-fee stamps to another. It is no offence. *Bibi Chandoo v. Jwala Pershad*, 11 I. C. 840.

Removing a new court-fee stamp from a document and substituting a used one with figures altered is an offence under s. 477-A of the Penal Code, *Emperor v. Bibidanandha Chakravarthi*, 47 Cal. 71.

There is no provision of law which prevents the use of a stamp by a person who has purchased it through another, though only the name of the latter has been entered on the stamp by the vendor. Madras Board's Proceedings No. 247, 1459 R. Mis. dated 22-10-1919.

Licensed vendors purchasing stamps from private persons are punishable for abetment of an offence under s. 69 of the Stamp Act. Madras Board's Pro. No. 2366 R. Mis. dated 14-10-1902.

**Bengal amendment.**—The following new section has been inserted, by Act VII of 1935, namely:—

**34-A.** *Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Act, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.*

*Enlargement of time.*



save under medical prescription, and the Administrator alone may import liquor for use for medical, sacramental, and industrial ends; the penalties in these matters were enhanced in 1923 at the request of the natives. Land is classed as Crown land, vested in the Crown free from native title or any estate in fee simple; European land held from the Crown in fee simple and native land, vested in the Crown but held by the natives by native title, that is, in accordance with the customs and usage of the Samoan race. But a title to native land cannot be asserted against the Crown save in so far as investigation of native title is provided for by regulation or ordinance. English law, as it was introduced into New Zealand on its becoming a Colony on 14 January 1840, is applied to Samoa, with various modifications; certain Acts are specifically applied, and in native cases Samoan laws of succession are to be followed. Contracts by Samoans are not to be enforced if held by the High Court to be unreasonable, oppressive, or improvident.

The property of the German Government in Samoa was taken over by the New Zealand Government; this gave it possession of a sixth of the land, but involved it in the difficult problem of importing or otherwise securing labour to work the coco-nut plantations, for which Chinese had been brought in under the German régime. The difficulty involved moral considerations; to bring in unmarried Chinese meant risk of illegal unions with Samoans—these being prohibited by the Act of 1921, while women introduced with the Chinese frequently turned out not to be their legal wives. Some importation, however, was necessary, while efforts were being made to secure Polynesian labour in lieu.<sup>1</sup> New Zealand aids the finances by a grant in aid of the additional medical and educational expenditure since the mandate was exercised, and has given £125,000—£25,000 as a donation, and the rest at 5 per cent., for public works.<sup>2</sup>

<sup>1</sup> On 31 Dec. 1925, besides 2,498 Europeans (446 pure) there were 36,688 Samoans, 155 Solomon Islanders, 890 Chinese working under free labour conditions but denied the right to settle. See *Parl. Pap.*, 1926, A. 4.

<sup>2</sup> Samoan appreciation was shown on 24 Dec. 1925, when certain sacred and historic emblems of the ancient kingship and government of Samoa were at the request of the Faipules entrusted to New Zealand. The doctrine of trusteeship was asserted unreservedly by the Governor-General on his visit to the islands in 1926.

## COMMENTARY.

The power to suspend levy of court-fee is new. There is also provision for the collection of the court-fee, the levy of which is suspended. It is provided that it can be collected as a public demand. This is only an extension of the procedure followed in collecting the fee in cases where leave to sue *in forma pauperis* is granted, the difference being that remedy provided is more summary than in the case of pauper petitions, as in these cases, the court-fee can be recovered as a public demand and not only by taking out execution proceedings. The method of collection of court-fee as a public demand both in this section and in section 12 is an innovation and the acceptance of this principle may have far-reaching consequences.

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

Saving of fees to  
certain officers of High  
Courts.

calculated to enforce much of the old German system of exploitation of the natives. The *Native Administration Proclamation* of 1922 enforces a strict system of passes to restrict and regulate the movements of the natives ; it also allows for the creation of native reserves and for the supervision of natives resident there and on farms ; the masters' and servants' laws of the Cape are also applied to regulate relations between workers and employers. The pass laws are not applied in purely native areas such as Ovamboland and the Rehoboth district, and exemptions may be granted in approved cases. The old rule of the German administration that natives must work—morally indefensible in any country which imposes no obligation on white people and supports them in idleness by doles—is enforced by the *Vagrancy Proclamation*, though efforts are made to secure that the native has some selection of employer—often nominal ; natives who possess visible means of support may be exempted, but it is to the interest of the employers and the administration that they should not be. The *Municipal Proclamation* authorizes municipalities, which were revived after temporary suppression in 1920, to regulate the control of natives on locations. Fortunately, the old reserves allotted to the natives by the Germans have been respected, and new reserves have been allocated to the extent of 6,177,150 acres—a miserable amount compared to the enormous areas claimed as Government land ; it is hoped thus to produce a contented population and to create a source of labour supply, in accordance with the efforts made in the Union to establish natives on inadequate reserves, so that they may be compelled to work for Europeans. The melancholy episode of the Bondelzwarts rising, induced by bad management and unfair treatment, and repressed with needless brutality, has been noted, as well as the impotence of the League to do anything to improve the lot of those who are the alleged objects of a ' sacred trust '.

Very different has been the treatment of the German settlers. General Smuts was firm in their regard on one issue only, the necessity of their accepting merger in the Union as their ultimate fate, while they meditated distinct existence with an ultimate autonomy, and the preservation of their speech and institutions, urging with justice that to substitute a quaint system like Roman Dutch law for the fine structure of German

Number.	Proper fee.
1. <i>Plaint, etc.—Contd</i>	Twenty rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Twenty-five rupees
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees.	

## COMMENTARY.

**Local amendments.**—This Article has been amended in Bengal by Act IV of 1922, in Behar and Orissa by Act I of 1922, in Bombay by Act II of 1932, in Central Provinces by Act XVI of 1935, in Madras by Act V of 1922, in Punjab by Act VII of 1922, and in the United Provinces by Act III of 1932. The amendments are all calculated to raise the scale of fees leviable under the Article. In Madras, the original scale is retained for suits of a small cause nature by the enactment of a separate Article, *viz.*, Art. 2 of Sch. I. In Central Provinces, the original scale is retained for suits between landlord and tenant for arrears of rent, the Article being amended to that end, while a separate Article, Art. I-A is enacted providing for a higher scale of fee for other suits. For the various amendments, and the Tables of rates of *ad valorem* fees for each province, see Appendix.

**Scope of the Schedules.**—Schedules I and II set out the fee payable in respect of particular suits or applications. Schedule I sets out the cases where *ad valorem* fee is levied, while Sch. II contains the cases where fixed fees are levied. Schedule I must be taken as supplementing provisions of s. 7 of the Act. In the words of Richards, C. J., in *In the goods of Mrs. Meik*, 40 A. 271 at p. 281 "We are bound to read the Schedules with the Act."

### Is Article 1 a substantive provision?

**The earlier view.**—The view was held that this Article was not a substantive provision but was only supplementary to s. 7. The idea was that it did not stand by itself but was a mere machinery provision for the application of s. 7 and other substantive provisions of the Act. The substantive provisions were thought to prescribe the processes by which the values of appeals as well as suits were

Governor-General, twelve elected in twelve electoral divisions by European males aged twenty-one and twelve months resident. A member must be enrolled as a voter, and must not have been convicted of crime for which he has been punished by imprisonment, unless he has received a pardon or five years have elapsed since the end of his sentence, nor be an unrehabilitated insolvent or of unsound mind. Seats are vacated by resignation, by failure to attend for a session without leave, and by loss of qualification, and in the case of a nominated member by revocation of nomination with the assent of the Governor-General. The Legislature chooses its own chairman, who has only a casting vote, but any member of the Executive Committee may address it, but not vote. It has a duration of three years, subject to dissolution for special cause by the Governor-General, and a session must take place once a year. Its powers to make ordinances are restricted by the necessity of special permission in advance from the Governor-General in any case of legislation affecting lands and matters as to natives, including native taxation; mines, minerals, mineral oils, and precious stones; railways and harbours and the staffs employed on them; the public service; the constitution, jurisdiction, and procedure of courts of justice; postal, telegraph, and telephone services; military organization; the South African Defence forces; immigration; customs and excise and currency and banking. There are also temporarily reserved for three years the subjects of police force; civil aviation; education in state-aided schools; land and agricultural banks and Government lands. These matters may be transferred by proclamation after three years on the request of two-thirds at least of the Assembly. Bills must be assented to, or reserved by, the Administrator; they may be disallowed by the Governor-General, reserved for further consideration, but must be assented to within one year or become null and void. The official languages are English and Dutch, but German may be used in the Assembly. There is formed a Territory Revenue Fund, which can normally only be appropriated by law, but on the refusal of the Assembly to grant sufficient appropriations or impose taxes necessary for carrying on the administration, the Governor-General may authorize the expenditure or impose the tax. The High Court alone has jurisdiction to consider any question as to the validity

class or character therein defined is to be calculated. The category of likely causes of action is as far as can be, exhausted, but in order to guard against the possibility of cases arising, for which no provision has been made, Sch. I, Art. 1 of the Act is so expressed as to include any plaint or memorandum of any kind or description other than that contemplated by ss. 7 and 8. The words "not otherwise provided for in this Act" relates back to those two sections." In (1905) 27 All. 447, *Nepal Rai v. Deb Prasad*, it was definitely laid down that s. 7 was confined to suits and that Art. 1 applied to suits and appeals not provided for in the section. The decision was followed in *Refernce under the Court-Fees Act* (1905), 29 Mad. 367, where it was laid down that s. 7 applied only to suits and that in appeals court-fee was payable under Article 1, Schedule I on the value of the subject-matter in dispute in it, and not of the subject-matter in dispute in the suit. Indeed, there is no reason why this Article alone of Schedule I should be considered as a mere mechanical provision, while all the rest of the Articles of that Schedule are certainly substantive provisions. The Article is now considered by all the High Courts as a general provision applicable to matters for which provision is not made in the ss. 7 and 8, in Sch. II and elsewhere in the Act. This construction of the Article was confirmed by the Legislature in 1908 when by means of s. 155 and Sch. IV of the Code of Civil Procedure a substantive provision about the chargeability to court-fees of written statements pleading set-off or counter-claim and of memoranda of cross-objections was inserted in it, thereby showing that the Article was a charging provision and not merely one fixing the amount of court-fees chargeable under some other section. The Article provides for all suits and appeals in which *ad valorem* court-fees is payable.

**"Not otherwise provided for."**—The words "not otherwise for" refer to suits and appeals not specially provided for elsewhere in the Act. In 3 All. 108, *Ragobir Singh v. Dharam Kuar*, Stuart C. J., observed :—"I have little doubt they refer to plaints and memoranda of appeals mentioned in Sch. II of the Act." As stated in *Sekharam v. Eacharan*, 20 M. L. J. 121 "The court-fee payable on a document of any of the kinds specified in the first or second schedule of the Court-Fees Act is indicated in one of those schedules. *Vide* ss. 4 and 6 of the Court-Fees Act. Article 1 of Sch. I is a general Article indicating the fee payable in respect of a plaint or memorandum of appeal not otherwise provided for in the Act, that is, we take it, not falling under any other Article of the first or second Schedules, as it is those Schedules which indicate the fee." A suit for cancellation of an instrument comes within the residuary provision in this Article, as there is no specific provision for it in the Act, *Kalu Ram v. Babu Lal*, 54 All. 812 (F.B.). See also *Suraj Ket Prasad v. Chandra*, 1934 A.L.J. 955 = 1934 All. 1071; *Akhlaq Ahmed v. Mt. Karam Ilahi*, 1935 A. L. J. 133 = 1935 All. 207. In Madras, however, a specific provision for cancellation clause IV-A has been introduced in s. 7 by

§ 5. *The British Empire Mandate for Nauru*

This is the most curious of all the mandates, for it was granted simply to His Britannic Majesty, and the meaning of this phrase was settled by agreement between the United Kingdom, Australia, and New Zealand to be these three Governments, the other parts of the Empire disinteresting themselves. The aim of the Governments was to obtain control of the phosphate deposits then worked by a British company, and for this end it was agreed to buy out the company, and to work the phosphates by means of a body of three appointed one by each Government, the output to be allotted to the Governments in the proportion of their shares in the purchase price, any amount not taken by the United Kingdom to be shared proportionately between Australia and New Zealand. The British view of the situation as explained in 1919 was that it acted as mediator between the two Dominions. The agreement was presented for approval by the three Parliaments and met with hostile reception in the United Kingdom, where the obvious objections were taken by a public, not yet disillusioned, that the plan violated the principle of the 'open door' and the maxim of trusteeship. Lord Milner proved obstinate, holding that the agreement was perfectly valid, though he was compelled to accept the amendment which confirmed the agreement subject to Article XXII of the Covenant of the League. He adopted, however, the characteristic and utterly untenable position of declaring that the Council had no right to have the terms of the mandate submitted, arguing that the powers of the Council arose only if the terms of a mandate had not been agreed on by the members of the League, by which he asserted the members concerned, not the Assembly, were meant. In point of fact this attitude was not persisted in, and a mandate was duly issued in the usual form by the approval of the Council. The administration was entrusted<sup>1</sup> for ten years to an Administrator appointed by the Australian Government, who took up office in June 1921, the island having hitherto been under an Imperial officer since 1915. He possesses full administrative, legislative, and judicial powers, insufficient care having been taken in the Commonwealth to secure due subordination to the Governor-General by

<sup>1</sup> Without approval by the League of Nations.

**Value.**—Value must be taken to be the value assigned by the plaintiff in his plaint and not as found by the court unless the claim has been purposely or through gross negligence wrongly valued. *Muhammad v. Abubakar*, 47 All. 534 = 85 I. C. 1055 and *Chunnital v. Tricamda*, 59 I. C. 407.

Under this Article court-fee is payable on the value of the subject-matter in dispute. The question arises whether this "value" denotes the market value or the statutory value mentioned in s. 7. "Turning to the Court-Fees Act, we find the governing rule applicable to appeals is the one in Sch. I Art. 1 of the Act. It says, leaving out the unnecessary words, the proper fee payable upon a memorandum of appeal not otherwise provided for in this Act, presented to any Civil Court except those mentioned in s. 3 with which we are not concerned, is to be calculated on the amount or value of the subject-matter in dispute. The way in which the fee is to be fixed is by taking 'the amount or value of the subject-matter in dispute'. The question therefore really turns upon the interpretation to be put upon the expression 'the subject-matter in dispute' and 'its value'. Turning to s. 7, cl. 5 of the Court Fees Act we find that 'in suits for the possession of land, houses, and gardens the court-fee is to be calculated according to the value of the subject-matter'. The same words 'the value of the subject-matter' are used there, and it says 'such value shall be deemed to be' in the various cases referred to as mentioned in clauses (a) to (e). In the absence of any guiding rule in the Act itself as to computing the value in appeal it is proper to take the 'value of the subject-matter' in Sch. I, cl. 1 as meaning the same thing as 'the value of the subject-matter' as set out in various sub-clauses of cl. 5, s. 7." *Krishnan, J.* In *re Seethayamma*, 48 Mad. 652 = 47 M. L. J. 919 = 1925 Mad. 323.

An appeal is to be valued according to its subject-matter, which in some cases may coincide with that of the suit and in others not. The value of an appeal is not in all cases the value of the suit as originally filed but the value of the relief granted by the decree which a party wishes to get rid of. In *re Porkodi Achi*, 45 Mad. 245 = 41 M. L. J. 587 = 1922 Mad. 211. Where the subject matter of the appeal is identical with that of the suit, the appeal should not be valued differently from the suit.

**Value for purposes of appeal.**—The value must be taken to be that which the plaintiff put in the plaint. See cases cited under the foregoing heading. In *Budho v. Rabia*, 9 Lah. 23 = 107 I. C. 63 it was held that in cases where the plaintiff was given a decree for an amount which exceeded the value tentatively put by the plaintiff, the decree amount alone determined the forum for appeal. See also *Surendra v. Hafsiur*, 13 I. C. 379. The value of an appeal is the value of the decree to the extent to which it is appealed against by the party against whom it is passed. In *re Seethayamma*, 48 Mad 652 = 47



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PART VI

THE JUDICIARY

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and an appeal was preferred only by some, it was held that the liability of the defendants could not be split up and that court-fee was payable on the entire value of the decree. *Dhanukdhari Prashad Pandey v. Ramadhikari Missir*, 12 Pat. 188=142 I.C. 617=1933 Pat. 81.

(3) **Separate Appeals.**—Where different defendants against whom a joint decree had been passed, filed two different appeals though they were entitled to file a joint appeal, it was held that full court-fee was payable on each of the appeals. *Panna Lal v. Marwar Bank*, 48 I. C. 424 (Punj.); see also *Umar Khan v. Mahomed Khan*, 10 Bom. 41.

(4) **Appeal by one of several plaintiffs.**—An appeal filed by only some of the parties need only to be stamped to the extent required by the interests of those parties. *Khale Khan v. Khair Din*, 10 Lah. L. T. 23.

(5) **Exoneration of property.**—Where a suit on a hypothecation bond is decreed wholly and some of the defendants appeal on the ground that their properties are not liable for the mortgage debt, court-fee is payable on the amount of the decree not exceeding however the market value of the property. *Venkappa v. Narasimha*, 10 Mad. 187; *Jugal Pershad v. Parbhu Narain*, 37 Cal. 914; *Madho Ray v. Musst. Bibi Mahmuwanissa*, 1927 Pat. 46. The value of the property is its market value and not its value under s. 7 at ten times the revenue. *Sarangapani v. Pitchu*, 1931 Mad. 710.

#### *Converse Case.*

Where the plaintiff appeals to make the properties exonerated by the decree from liability liable for the mortgage court-fee is chargeable on the decree amount or the market value of the property whichever is less. *Kesavarappa Ramakrishna Reddy v. Kottahota Reddy*, 30 Mad. 96 (F. B.) Where the trial court decreed the plaintiff's claim against the person and property of the 1st defendant, and refused to pass a decree against the assets of the deceased in the hands of defendants 2 to 5 and the plaintiff appealed asking for a decree against such assets in the hands of defendants 2 to 5, it was held that an *ad valorem* court-fee ought to be paid on the value of such assets or on the amount claimed by the plaintiff in the appeal, whichever was less. *Sabir Hussain v. Farzand Hasan*, 54 All. 608=138 I. C. 622=1932 A. L. J. 387=1932 All 406. It was held in this case that the assets of the deceased in the hands of the defendants 2 to 5 had a money value and that Art. 17 cl. (6) could not apply to a property which clearly had a money value, although it may be difficult to estimate such value correctly.

(6) **Several defendants and several items of property.**—Where a decree is passed declaring the liability of the several parties separately for varying specific sums and one of the defendants appeals to exonerate his property from liability for the amount for which it is declared liable, the value of the appeal is that amount and

## THE TENURE AND NATURE OF JUDICIAL OFFICE

§ 1. *Judicial Tenure*

BEFORE self-government was accorded, colonial judges were, as a rule, adequately protected from capricious control by the executive. They might be removed under Burke's Act<sup>1</sup> by the Governor in Council, but from such removal an appeal lay to the Privy Council. The practice had also grown up of the Crown removing on addresses from the Legislature, in imitation of British usage, but in this case also the Crown would normally consult the Privy Council before acting.<sup>2</sup> At the introduction of responsible government into Canada no further change was made save for the placing of the judges' salaries in the Civil List of the Act of 1840, and similar provision was made in Nova Scotia, New Brunswick, and Prince Edward Island, when responsible government was granted. The regulation of judicial tenure by Nova Scotia in 1848 (c. 21) authorized removal on an address from the Legislature, but subject to an appeal to the Privy Council, while Canada also regulated tenure by two Acts of 1843 and 1849. The local Acts, however, were superseded as regards judges of superior Courts in Canada by s. 99 of the *British North America Act*, 1867, which provides that the judges of the superior Courts shall hold office during good behaviour, but may be removed by the Governor-General on address from the Senate and House of Commons. As regards judges of the Supreme Court of Canada itself, their position is made the same by Dominion legislation,<sup>3</sup> which likewise vests their appointment in the Governor-General in Council. Further Dominion legislation gives judges of County Courts tenure during good behaviour, but subject to removal by the Governor-General in Council on the ground of misbehaviour, or inability, or incapacity to perform the duties of the post by reason of old age, ill health, or other cause. In the case of Supreme Court

<sup>1</sup> 22 Geo. III, c. 75.

<sup>2</sup> *Representatives of the Island of Grenada v. Sanderson*, 6 Moo. P. C. 38. These petitions were fit for reference to the Privy Council under 3 & 4 Will. IV, c. 41, s. 4.

<sup>3</sup> Age limit, 75, fixed in 1927.

random of appeal *in a suit* to obtain a declaratory decree where no consequential relief is claimed. In the present case we have a memorandum of appeal in a suit of a totally different nature, namely, a suit for sale on a mortgage. If the appellants' contention were accepted. I think it would be always possible for a defendant, against whom a decree has been passed, to appeal against the decree on payment of a fixed court-fee of Rs. 10, by the simple device of asking for a mere declaration that the decree is erroneous and not binding upon him. Supposing a money decree for Rs. 10,000 is passed against a defendant. He might in his appeal ask for a mere declaration that the decree is erroneous and that he is not liable to pay anything to the decree-holder, and might thus claim to file the appeal on a fixed fee of Rs. 10 only. Whatever may be the view of the appellate court regarding the form in which the relief sought by the appeal has been framed, I think it is clear that Art. 17 (iii) of Schedule II has no direct application, and I see no reason for applying the principle of that clause by way of analogy. . . . I think the substance of the relief sought, and not merely its form, must be considered." See also *Mothi Begum v. Har Prasad*, 16 A. L. J. 81. In *John v. Suraj Bhan*, 54 All. 553, the plaintiff sued a company and certain debenture holders for the recovery of a certain amount and for a declaration that the amount was recoverable in priority over the debentures. The claim for money was decreed against the company and the declaration sought was granted. The debenture-holders appealed to set aside the decision as to the declaration of priority. It was held that court-fee was payable *ad valorem* on the decretal amount or the value of the debentures whichever was less. It was observed that the fee payable was not Rs. 10 as for declaration under Art. 17 (3), as the appeal did not arise from a suit for mere declaration without consequential relief.

**(11) Appeal by mortgagor challenging portion of decree in favour of a puisne mortgagee.**—In a suit for sale on a mortgage, the mortgagor and the puisne mortgagee were impleaded as defendants. The mortgagor denied the puisne mortgage but the court held that the mortgage was true and enforceable and gave a direction in their decree that the balance of the sale proceeds which might remain after paying off the plaintiff's mortgage should be paid to the said puisne mortgagee and the surplus, if any, should be paid to the mortgagor. The mortgagor appealed on a fixed court-fee under Art. 17 cls. (iii) and (vi) contending that he wanted only a declaration that the mortgage in favour of the contesting respondents did not exist and that as it was uncertain what amount would be realised in sale and what surplus would remain for disposal according to the decree after paying off the plaintiff's mortgage, the appeal was incapable of valuation. The court over-ruled the contention and held that *ad valorem* court-fee must be paid on the amount of the mortgage. *Kharaiti Ram v. Chuni Lal*, 146 I. C. 1003=1933 Lah. 954.

**(12) Interpleader suit.**—In an appeal from a decision in an interpleader suit regarding money, the court-fee payable is a fixed

judges, even those serving, over age seventy on full pension. The same provisions were applied to Queensland in 1859 in the letters patent, under Order in Council authorized by Imperial Act and confirmed by another Act.<sup>1</sup> In Western Australia they were enacted in the Imperial Act of 1890<sup>2</sup> deciding the form of constitution. In these cases it may be held that, in view of the one definite mode of removal provided and the analogy of the United Kingdom, Burke's Act may be deemed to have no application. That Act was passed to secure that holders of patent offices should exercise their offices and not stay in England, leaving ill-paid deputies to perform their functions, and, therefore, the power to remove was given, but subject to appeal to the Privy Council, for a patent office was a quasi freehold whence a man might not lightly be dispossessed. It has never been judicially decided whether the Act refers only to office under the Great Seal of England, as in *Montagu v. Lieutenant-Governor of Van Diemen's Land*,<sup>3</sup> or to offices under the local Great Seals, as in *Willis v. Sir George Gipps*,<sup>4</sup> but it has been ruled, in *Ex parte Robertson*,<sup>5</sup> that it applies only to offices held during good behaviour, that is to judges, civil service commissioners, railway commissioners, and other high officers. It may be admitted that the mode of removal must be reckoned an alternative to that of removal on addresses, but the better opinion seems to be that the new method was intended to exclude the old. In the case of South Australia, however, where a fourth judge was added by Act No. 1358, and the power to remove on address from the Houses is merely given by local Act, No. 2 of 1855-6 (ss. 30, 31), the right to act under Burke's Act is incontestable. It may be that it is so also in Victoria,<sup>6</sup> though the fact that the Imperial Act gives the power to remove on an address to the Governor suggests that this was intended definitely to negative the application of the old Act. Further, it appears that the Constitution Act of Victoria must not be deemed to have removed the older Act, 15 Vict. No. 10, s. 5, under which the Governor in Council can suspend a judge; on the ruling of the local law officers and the Imperial law officers it was held that this Act must be deemed to be still applicable,

<sup>1</sup> See 31 Vict. No. 38, ss. 4, 16, 17.      <sup>2</sup> 53 & 54 Vict. c. 26, sched. ss. 54-6.

<sup>3</sup> 6 Moo. P. C. 489.

<sup>4</sup> 5 Moo. P. C. 379.

<sup>5</sup> 11 Moo. P. C. 288.

<sup>6</sup> 18 & 19 Vict. c. 55, sched. ss. 38, 39.

**(19) Pre-emption suit and appeal by vendee.**—Where the vendees appellants challenged the right of the pre-emptors to bring the suit for pre-emption and also claimed the balance of the purchase money which had not been allowed to them, it was held that the fees payable by them is for the amount originally paid by the pre-emptors. It was observed that had the appellants not challenged the pre-emptor's right they would have had to pay on the value of the cash balance claimed. *Harichand v. Attar Singh*, 1931 Lah. 490.

Where in a pre-emption suit the defendants admitted the plaintiff's right and the trial court gave a decree to the plaintiff and fixed the market price as claimed by the defendants and the plaintiff appealed stating that the real market price was a smaller amount and paid court-fee only on that, it was held that the court could not dismiss the entire appeal but should hear the same to the extent that court-fee had been paid. *Amirshah v. Syedshah*, 1931 Lah. 237. Where a suit for possession of house by pre-emption is decreed on payment of Rs. 700, the court-fee on memorandum of appeal should be paid *ad valorem* on that amount. *Ram Labhya v. Vaid Parkash*, 1934 Lah. 424.

**(20) Partition suit.**—If in an appeal in a partition suit the appellant claims sums as due from the other party further than what was awarded by the lower court, court-fees should be paid *ad valorem* on the amounts claimed. *Peshauri Dal v. Jai Kishan Das*, 33 P. L. R. 12; *Sukha Nand v. Mt. Shiv Devi*, 1935 Lah. 14.

Where the appellant not only claims sums from the other party but also pleads that he should not have been made liable for certain other sums, court-fee is payable on the several sums on the *ad valorem* scale. *Jai Deyal v. Narain Das*, 32 P. L. R. 854.

**(21) Redemption suit.**—The fee payable is *ad valorem* on the amount by which the decretal amount is sought to be reduced. *Hira Lal v. Mulchand*, 1930 Lah. 601. See also *Harihar Bahksh Singh v. Lachhman Singh*, 11 O.W.N. 559=1934 Oudh 246 (Cross-objections in appeal arising out of redemption suit).

The court-fee payable on a memorandum of appeal is determined only by the value of the subject-matter of the appeal. A suit may change its nature in appeal and though the original suit may be for redemption, the appeal might relate only to the mortgage amount. In such a case the court-fee payable is *ad valorem* on the sum in dispute under this Article. It will be different, however, if the suit is dismissed and the plaintiff is the appellant. *Harlal v. Sriram*, 1931 Lah. 633. See also under s. 7, cl. ix.

**(22) Appeal in suit to contest notice of ejectment.**—Appeal by the landlord defendant in a suit to contest notice of ejectment and compensation seeking to get rid of the liability to compensation must bear *ad valorem* court-fee on the amount of compensation decreed. But if the plaintiff tenant appeals claiming non-ejectment and the alternative more compensation he has to pay court-fee in

It has been judicially held in a Queensland case<sup>1</sup> that income tax on a judge's salary is not contrary to the constitution, for that does not mean that a salary is to be exempt from normal taxation. Moreover, both New South Wales and Queensland have decided that judges must retire at age seventy, contrary to the usual rule which makes the offices *ad vitam aut culpam*; the Queensland Act of 1921, No. 14, gives no pension, destroying judicial independence. Further, it has been definitely laid down by the Privy Council<sup>2</sup> that it is possible for Queensland to appoint a judge of the Supreme Court with a limited period of office, though subject when in that office to the rule of good behaviour, however much such appointments may be open to objection as diminishing the impartiality and independence of the bench.<sup>3</sup> The legislation, however, of Queensland is distinctly in the direction of diminishing the position of the judiciary, as was shown in 1925 when a railway strike forced it to declare by legislation a higher minimum wage than that laid down by the Arbitration Court established for the express purpose of reaching decisions on evidence, and not under pressure of strike threats, which the Government was too cowardly to resist.

In New Zealand no provision was made as to judicial tenure in the Act of 1852, but the civil list (s. 65) provided salaries for a Chief Justice and a puisne judge. In 1857 a temporary appointment of a puisne judge was made, though there was no vacancy, and in 1858 an Act was passed to regulate appointment, which was to be by the Governor in the name of the Crown, while removal of judges, who were to hold during good behaviour, was to be by the Governor on address from both Houses; another Act provided judicial salaries, while s. 6 of the first Act provided that the salary of a judge should not be diminished while in office.<sup>4</sup> These principles were maintained in Act No. 29

<sup>1</sup> *Cooper v. Commissioner of Income Tax for Queensland*, 4 C. L. R. 1304; cf. *Abbott v. City of St. John*, 40 S. C. R. 597.

<sup>2</sup> *McCawley v. R.*, [1920] A. C. 691.

<sup>3</sup> To prevent this, while the power to appoint is given generally in New South Wales Act No. 9 of 1912, both Houses of Parliament must concur in adding beyond seven puisne judges. An age limit cannot be made in the Commonwealth, but in 1926 pensions were given to encourage retirement; *Debates*, pp. 2238 ff. Victoria, Tasmania, Western Australia have pensions.

<sup>4</sup> The commissions of judges were not to determine on the demise of the

Act', and the question is whether this memorandum of appeal is 'otherwise provided for by this Act,' that is, as a memorandum of appeal against an order. On the words of these two Articles standing alone the answer would be that it is an appeal from an order. But I do not think it possible to take those words away from their context. Throughout the Act references are made to the Code of Civil Procedure and it is quite clear that words are used again and again the meaning of which can only be discovered by looking to the Code which governs the procedure of the Courts to which the court-fees are to apply. Looking at the Code of Civil Procedure, s. 2 (14) defines an 'order' as the 'formal expression of any decision of a Civil Court which is not a decree,' and, in my judgment, the word 'order' in Art. 11 of Sch. II of the Court-Fees Act has the same meaning. To ascertain whether an order is a decree or not one has to look at s. 2 (2) of the Code of Civil Procedure and there one finds "'decree' means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit," and it goes on. 'It shall be deemed to include the rejection of a plaint' and certain other matters. Now the words 'shall be deemed to include' are rather difficult words, because I think it is right to say that if it is necessary for a statute to say they are to be deemed to include, it means that, unless the statute had said so, they would not be included, and I think the true view of such words is that a statute, which is defining for purposes of the statute certain expressions which have ordinary meanings, as soon as it includes things not covered by the ordinary meaning of the words by saying that they are to be deemed to include, is setting up a statutory meaning of the words irrespective of their true ordinary meaning: and those things which are by statute to be deemed to be decrees are to be treated for all purposes to which that statute applies as being decrees. For purposes of appeal, for instance, or for any other purposes of the Code itself, orders rejecting plaints are decrees, and it follows that for purposes of the Code of Civil Procedure they are not orders within the meaning of s. 2 (14). I think that the Court-Fees Act, which itself contains no definition of either the word 'order' or the word 'decree' must have meant to follow the definition contained in the Code of Civil Procedure, and I am strongly confirmed in this view by the words of Art. 11 of Sch. II which include in the word 'order' orders determining questions under ss. 47 and 144 of the Code of Civil Procedure. These are orders and it is quite unnecessary to say that the words 'Memorandum of appeal when the appeal is from an order,' are to include these orders if they would be included without their being specifically mentioned; and when one looks to find why it is that the Court-Fees Act has gone out of its way to say that 'order' in Art. 11 of Sch. II shall include two particular named orders, one finds the solution very ready to hand by looking at the definition of decree in the Civil Procedure Code because that



having been reserved by the Governor—and as the two Houses which passed the addresses were strictly speaking irregularly constituted, the electoral Act No. 10 of 1856 not having been reserved, they did not recommend removal. In 1866 another effort was made to remove this judge, but the Privy Council shared the views of the law officers that it was not a case for action by the Crown, and the Governor in Council in 1867 cut the knot by moving him under Burke's Act.<sup>1</sup>

In the case of the Cape<sup>2</sup> before union the Crown under the Charter of Justice could remove, the Governor under the royal instructions could suspend, and under Burke's Act the Governor in Council could remove. In Natal, under Act No. 14 of 1893 (ss. 43–5), removal was possible by the Crown on address from both Houses, while Burke's Act obviously applied. In the case of the Transvaal<sup>3</sup> and Orange River Colony<sup>4</sup> the provisions of the Commonwealth Constitution were rigidly followed, but of course letters patent could not bar Burke's Act. The Union Act<sup>5</sup> vests the appointment in the Governor-General in Council, provides that their salaries shall not be diminished while in office, and allows removal only on address from the Houses of Parliament on the ground of misbehaviour or incapacity, the term 'proved' being ignored as unnecessary and confusing, and possibly permitting the intervention of the Courts on the score that nothing had been proved. But the letters patent (s. 38) for Southern Rhodesia maintain the Commonwealth form, with 'proved' inserted, while those for Malta (s. 55) follow the same model. It should be added that the fact that provision is made in the civil list for judicial salaries is no bar to adding new judges without altering the civil list.

In Northern Ireland the judges hold office by the usual British tenure, subject to removal on addresses from the Houses of Parliament. It must, of course, be remembered that the British rule does not preclude the legal<sup>6</sup> right to remove by *scire facias*, or on an information at the suit of the Attorney-General, though the probability of cause arising for recourse to

<sup>1</sup> South Australia *Parl. Pap.*, 1867, Nos. 22, 23, 41.

<sup>2</sup> *Consol. Stat.*, 1652–1895, i. 95; Act No. 35 of 1896.

<sup>3</sup> Letters Patent, 6 Dec. 1906, s. xlviii.

<sup>4</sup> Letters Patent, 5 June 1907, s. 1.

<sup>5</sup> 9 Edw. VII, c. 9, ss. 100, 101.

<sup>6</sup> Todd, *Parl. Gov. in England*, ii. 857 ff.

without expressing its reasons. There is authority apparently against this view in the case of *Surendra Narain Sinha v. Hafijur Rahaman*, 30 I. C. 378. In that case the point argued before me was not raised, the decision as to it was not necessary for the decision of the case and no reasons were given for the decision; and I venture to disagree with that part of that decision. Other authorities there are none, though there have been cases in which it would appear that fees have been paid not on the scale which I am now holding is applicable but on some higher scale, but I can find no case where the point has been taken and argued and decided.

If the subject-matter in dispute were not the difference in the two fees, then I think it would be a subject-matter which is incapable of valuation. The question is whether this case has to be heard or not and I confess that I have had very considerable doubt whether it is not more correct to say that the real subject-matter is whether the case is to be heard or not and not what fee is to be paid: but, on the whole, I think where there is a definite amount of stamp in dispute and the question to be determined is whether that amount was properly demanded and was payable one can value the subject-matter in dispute and I have come to the conclusion that as between the application of Art. 1 of Sch. I and Art. 17 of Sch. II, I must hold in this case that Art. 1 of Sch. I applies."

**Allahabad.**—The same is the view of the Allahabad High Court. *Durga Prasad v. Raghubir Dial*, (1882) 2 A. W. N. 244.

**Calcutta.**—When the plaint was rejected for insufficiency of court-fees and the plaintiff preferred an appeal valuing it in the same way as the plaint, it was held that the appellate court was bound to go into the question of the true value of the properties and that without coming to a finding on this question it could not hold that the appeal was insufficiently stamped. *Amartalal Kumar v. Sisir Kumar*, 1927 Cal. 427.

**Bombay.**—Where a plaint is rejected for insufficiency of court-fees and the plaintiff files an appeal disputing the correctness of the amount demanded by the Lower Court, the Taxing Officer was of opinion that the fee payable on the memo of appeal was only that paid on the plaint and gave very cogent reasons therefor in his reference to the Chief Justice on the point.

"An appeal has been filed against the order, and the main contention of the appellant is that the view taken by the Subordinate Judge as regards the valuation of the claim and the applicability of the sections of the Court-Fees Act as laid down by him is erroneous. This being so, a taxing officer would be exceeding his power were he to take upon himself to decide the very question on which the Appellant by the memorandum of his appeal seeks for a judicial decision of the Court after argument on both sides. He is usurping the powers of the court and would be in reality"

The Free State has made an important step in judicial organization in the direction of decentralization by the creation of eight Circuit Courts with a wide civil and criminal jurisdiction, appeals lying to the High Court in civil causes, and to the Court of Criminal Appeal in criminal matters. The result of this is to diminish the importance and quantity of the work which is brought before the High Court of six judges at Dublin, whose members also man the Central Criminal Court for specially serious offences. The final Court of Appeal is the Supreme Court of three judges. This may be compared with the Queensland decision in 1921 (No. 15) to abolish the District Courts and to substitute for them sittings of the Supreme Court consisting of one judge in the districts, the existing judges of the District Courts being transformed into Supreme Court judges.

Elsewhere the rule has been rather to assimilate practice to that of the Supreme Court in England. Thus in New Brunswick in 1913 (c. 23) the Court was reorganized as a Court of Appeal, of King's Bench, and of Chancery; Saskatchewan in 1915 (cc. 9, 10) set up a Court of Appeal and a Court of King's Bench. In 1919 an Act was passed in Quebec, which was repealed, but in large measure re-enacted in 1920, producing an improvement in organization by abolishing the Court of Review, which formerly presented an alternative to going to the Court of Appeal, so that there were left the Court of Appeal, and the Superior Court, the latter concentrated practically at Montreal and Quebec. The changes in Ontario in 1909 and in 1923 (c. 23) in effect merely establish a High Court Division and an Appellate Division, the latter sitting in two Divisions, each under a Chief Justice. In 1924, however, by c. 30, a change was proposed, it being desired to reconstitute the Court with one Appellate Division, and to authorize the Lieutenant-Governor in Council to assign judges to the Appellate Division, appointing one Chief Justice of Ontario, and to appoint another to be Chief Justice of the High Court. This was a barefaced attempt to encroach on the power of appointment vested in the Dominion Government and was ruled to be *ultra vires* by the Privy Council, though the right of the province to deal with the organization of the Court in general was not disputed.<sup>1</sup>

<sup>1</sup> *A.-G. for Ontario v. A.-G. for Canada*, [1925] A. C. 750; 56 O. L. R. 1,

be stamped *ad valorem* under Article 1 of the first schedule to the Court-Fees Act, 1870, as an appeal from a decree. *Siva Ram v. Nand Ram*, 44 All. 407; *Brij Lal v. Damodar Das*, 45 All. 555 and *Balmakund v. Basanta Kumari Dasi*, 3 Pat. 371 were referred to. See also *Guru Muhammad v. Sabz Ali Khan*, 1930 Lah. 24. But in *Moti Singh v. Harbujan Singh*, 1927 Lah. 635, it was held that an appeal from an order under s. 144, C.P.C. does not according to the practice of the Lahore High Court require *ad valorem* fee but a court fee stamp of Rs. 4 is sufficient. In *Gubba v. Kanchhedilal*, 1922 Nag. 62 the decree-holder had obtained possession under the final decree for foreclosure, which was set aside in appeal. The application of the judgment-debtor for compensation under s. 144, C.P.C., was dismissed and he appealed against the order. It was held that the question of compensation related to the execution, discharge, or satisfaction of the decree in appeal and being thus an order coming within s. 47 of the Code the court-fee of 8 as. paid on the memorandum of appeal to the District Judge was sufficient. In Madras, Art. 11 of Sch. II specifically provides for appeals against such orders.

**Award—Appeal against decree in terms thereof.**—In *Gowri Shankar v. Ananda Ram*, 1926 Lah. 403, it was held by Broadway, J., that where a decree is passed in terms of an award on a reference under the C. P. C. the court-fee for an appeal from such decree is *ad valorem* under Sch. I, Art. 1. "It was argued that inasmuch as the order filing the award was appealable under s. 104 (f), C. P. C. such an appeal would be with a court-fee of Re. 1. As a matter of fact there are authorities which lay down that although an appeal under s. 104 (f) is competent notwithstanding the fact that an award though filed has been the basis of a decree in its terms, nevertheless the court fee payable on such an appeal would be *ad valorem*. See *Dharan Das v. Ajuadhaya Prosad*, 70 P. R. 1881 and *Hari Mohan v. Kali Prasad*, 33 Cal. 11."

### Mesne Profits.

**Order 20, Rule 12, C. P. C.**—When a preliminary decree is passed declaring the right to mesne profits subsequent to suit and ordering an inquiry as to the amount of the mesne profits, and an order is afterwards made determining the amount of profits the order is a final decree and not a proceeding in execution and an appeal against that order requires *ad valorem* court-fee on the amount of mesne profits in dispute in appeal. *Balaram Naidu v. Sangam Naidu*, 45 Mad. 280.

A memorandum of appeal from an order dismissing an application for ascertainment of mesne profits must be stamped *ad valorem* on the amount claimed. *Narain Prasad v. Sheo Kameswar Prasad Singh*, 3 Pat. L. J. 101.

An appeal from an order determining the amount of mesne profits and made on an application for ascertainment of them requires *ad valorem* fee calculated on the amount by which the amount awarded

intervention of the Law Courts, and in England also there has been a distinct tendency of late in the same sense.

In England a controversy of no great value has raged as to the power of the Crown to hold Executive inquiries, and there is legal opinion in the case of the Oxford University Commission to the effect that it is improper for the Crown to investigate by executive forms charges of misconduct against a corporation, seeing that it is possible to proceed judicially by information in the Court of King's Bench.<sup>1</sup> These views are clearly valueless for the case of England, and such restriction on Executive inquiries as may exist rises simply from the inability of the Crown without legislation to compel witnesses to give evidence or to take an oath. But it has been contended successfully in New Zealand<sup>2</sup> that it is an illegal invasion of the judicial power for the Crown to inquire by whom an offence has been committed or whether any penalty or forfeiture has been incurred, it being held that such an inquiry is within the mischief provided against by the Act 42 Edward III, c. 3, and the Act for the abolition of the Star Chamber (16 Car. I, c. 10), which may be held to be in force as part of the English law introduced into the Dominion. It is clear that this decision is wrong, and it conflicts with a decision of much higher authority, the High Court of the Commonwealth in *Clough v. Leahy*,<sup>3</sup> on appeal from the Supreme Court of New South Wales. In that State, as in the rest of Australia, a general power<sup>4</sup> exists by statute enjoining witnesses to answer on oath questions put by Royal Commissions, and a witness was prosecuted for refusal to answer questions, the inquiry being one regarding the operation of a certain industrial union, whether it was an evasion of two Acts of Parliament, and whether it hampered the Industrial Arbitration Court in its dealing with the pastoral industry. It was contended that the matter fell within the sphere of the Arbitration Court, and that the Executive could not properly employ its powers to deal with it, and this contention succeeded in the Supreme Court<sup>5</sup> but was rejected by the

<sup>1</sup> Harrison Moore, *Columbia Law Review*, xiii. 500 ff.; *Parl. Pap.*, 1852, xxvi. 331 ff., 341.   <sup>2</sup> *Cock v. Attorney-General and another* (1909), 28 N. Z. L. R. 405.

<sup>3</sup> (1904) 2 C. L. R. 139; cf. *Cox v. Coleridge*, 1 B. & C. 37.

<sup>4</sup> No. 23 of 1901. See, e.g., Commonwealth Acts No. 12 of 1902; No. 4 of 1912.

<sup>5</sup> (1904) 4 S. R. (N. S. W.) 401.

In regard to the amount of the court-fee payable it cannot be said to be a case in which the value of the appeal cannot be ascertained. The appellant hopes, if he succeeds in this appeal, to obtain a large sum which he has stated in his plaint. The court-fee payable is, therefore, in my opinion an *ad valorem* fee." The practice of allowing plaintiffs to include in a suit for recovery of land a claim for mesne profits without paying any court-fee on the amount claimed as mesne profits was condemned as wrong, their Lordships observing (p. 70): "A suit for mesne profits is a suit for money demanded as damages or compensation, and in that sense it is to be assessed with an *ad valorem* fee even if it be regarded as a suit for an account. The Court-Fees Act, section 7 (iv), in its last clause is peremptory that any such suit shall be approximately valued. The same provision has now been introduced into the Civil Procedure Code. The old practice of allowing plaintiffs to include in a suit for land a suit for money as mesne profits without paying any court-fee upon the mesne profits was undoubtedly wrong, and in my view a circular should be issued to the lower courts drawing attention to this error in practice."

In *Collector of Etawah v. Bindraban*, 1931 All. 538, the suit was for recovery of possession of land and mesne profits estimated at Rs. 15,106-12-7. Possession was decreed. As regards the mesne profits, the order was: "The amount of mesne profits will be settled in the execution department." The plaintiff then made an application for a final decree under O. 20 r. 12 (2) C. P. C., but it was disallowed on the ground that the judgment did not direct payment of any mesne profits to him. He appealed against this order. It was held that the order appealed from was an order made in the suit itself and not in execution proceedings and was a decree and that *ad valorem* court-fee was payable in the appeal on the abovesaid amount claimed by plaintiff and negated by the order of the lower court.

**Appeal against preliminary decree directing ascertainment of mesne profits.**—Where a defendant appeals from a decree for recovery of possession and antecedent mesne profits, the latter being directed to be ascertained in execution, the memorandum of appeal should bear court-fee stamps also upon the amount of mesne profits as estimated in the plaint, *Bunwan Lal v. Daya Sankar Misser*, 13 C. W. N. 815; *Manik Chand Ram v. Bibi Najiban*, 49 I. C. 962 (Pat.) See also the recent decision in *Deonandan Misra v. Ganga Prasad*, 8 Pat. 906. In that suit, the claims for possession and antecedent mesne profits were valued respectively at Rs. 900 and Rs. 1,184-3-6, in all Rs. 2,084-3-6. The suit was decreed, the mesne profits being directed to be determined in a separate proceeding. Defendant preferred an appeal to the District Judge against the whole decree but valued his appeal only at Rs. 900, and paid a portion of the court-fee due on Rs. 900. On the 19th September 1927 (which was the last day of limitation), the deficit court-fee on Rs. 900 was paid, but the valuation was not even then made to include the mesne profits. On that day the District Judge directed

## DOMINION JURISDICTION UNDER IMPERIAL ACTS

§ 1. *Admiralty Jurisdiction*

THE *Admiralty Offences (Colonial) Act*, 1849,<sup>1</sup> confers on Colonial Courts the power to deal with any persons who are within the Colony, or are brought there for trial, in respect of treason, piracy, felony, robbery, murder, conspiracy, or other offence committed within the Admiralty jurisdiction in the same manner as if the crime had been committed in the waters of the Colony. The sentence by s. 2 is to be that appropriate under English law, but that was altered by an Act of 1874<sup>2</sup> to substitute the local penalty for such an Act, or the appropriate English penalty. The Act also declares cases where a person dies at sea from injury on land or vice versa to be within colonial jurisdiction. It has been held that Admiralty jurisdiction applies to British ships in foreign territorial waters, even indeed on navigable rivers far inland, and in respect of foreigners on such ships whether on the high seas or on navigable rivers.<sup>3</sup> But Admiralty jurisdiction was ruled in *R. v. Keyn*<sup>4</sup> not to apply to foreigners on foreign ships in respect of offences committed in English territorial waters, and the defect was removed by the *Territorial Waters Jurisdiction Act*, 1878,<sup>5</sup> which allows such an offence to be treated as committed within the jurisdiction of the Admiralty. In the case of any prosecution in a Colony the consent of the Governor is requisite, but it seems clear that, apart from this statute, the power to apply the criminal law of a Colony within its territorial waters exists as a matter of right, and foreign fishing vessels are regularly proceeded against in Colonies without any regard to the terms of

<sup>1</sup> 12 & 13 Vict. c. 96; 28 Hen. VIII, c. 15; 11 Will. III, c. 7; 46 Geo. III, c. 54; 9 Geo. IV, c. 83; 7 & 8 Vict. c. 2.

<sup>2</sup> 37 & 38 Vict. c. 27, s. 3, passed in consequence of *Reg. v. Mount*, L. R. 6 P. C. 283.

<sup>3</sup> *Reg. v. Anderson* (1868), 10 App. Cas. 59; *Reg. v. Carr* (1882), 10 Q. B. D. 76. See 4 & 5 Will. IV, c. 36, s. 22. Cf. *Reg. v. Armstrong*, 13 Cox, C. C. 185.

<sup>4</sup> (1876) 2 Ex. D. 63; *The Franconia* (1877), 2 P. D. 163.

<sup>5</sup> 41 & 42 Vict. c. 73. Cf. Keith, *J. C. L.* viii. 290 f.

three years' mesne profits are awardable, but this decision was not carried into the decree. Their Lordships observed thus:— "In his judgment the learned Subordinate Judge has found that the claim to mesne profits prior to three years before suit is barred although he does not in express terms award mesne profits for this period. He adds that the rate will be determined at the stage of the final decree. The preliminary decree embodies this latter direction but makes no reference to the term of three years. There is accordingly no sum certain fixed in this respect upon which the court-fee can be paid by the appellant. The alternatives seem to be either that he should pay no fee at all or, as was held, we think *obiter*, in 52 Madras Law Journal 128, that he should pay it on the valuation given in the plaint. With much respect to the learned Judges who expressed that view, we can find no sufficient justification for adopting this latter course. The decree, which we must follow in preference to the judgment, contains no more than a direction for the determination of the mesne profits and accordingly it is difficult to apply the terms of Sch. I of the Court-Fees Act, where it is said that the fee is to be payable on the amount or value of the subject-matter in dispute. The appellant asks us to adopt the position that in the case of all decrees for possession and mesne profits it is only necessary to appeal against that part of the decree which awards possession, because if it be set aside the award of mesne profits must necessarily go with it. We need not go so far as to discuss the tenability of this view. Where however a preliminary decree only makes provision for the subsequent determination of the mesne profits we think that the apt occasion for requiring a defendant to pay a court-fee in this respect would be if and when the profits have been determined by a final decree. To require him to pay now a court-fee upon the profits as estimated in the plaint, where there is as yet no question as to their amount but only as to the right of the plaintiff to receive them, appears not only difficult to justify on principle but also to lead to the difficulty that if the defendant subsequently has to appeal against the amount of mesne profits awarded by the final decree, he would pay court-fee twice over. We do not think therefore that at the present stage the fee payable should comprise this item." *Kandunni Nair v. Ittunni Rama Nair*, 53 M. 540. It is submitted that the decision requires re-consideration, being directly opposed as it is to the decisions of other courts mentioned above on the identical point, and conflicting also as it does with Madras decisions by Division and Full Benches in similar appeals from suits for accounts. One of the reasons given in the decision for the conclusion that no court fee is payable is that since the amount of profits has not yet been ascertained, to require the appellant to pay court-fee on them is "difficult to justify on principle." But the principle exists equally in appeals from preliminary decrees in suits for accounts. A Full Bench of the Madras High Court has however, decided that such an appeal from a preliminary decree



conferred which is not given to a Colonial Court of Admiralty by s. 2. That section confers on any Court declared by a Legislature to be a Colonial Court of Admiralty, and on any colonial Court with unlimited civil jurisdiction in a Colony in which no declaration has been made, the full authority of the Admiralty Division of the High Court ; such a Court must, like that Court, pay due regard to international law and the comity of nations. References to Vice-Admiralty Courts in Imperial or Colonial Acts are to read as references to Colonial Courts of Admiralty. The powers, however, of Colonial Courts of Admiralty under the *Naval Prize Act*, 1864, and the *Slave Trade Act*, 1873, are to be those only ascribed to Vice-Admiralty Courts by these Acts,<sup>1</sup> and the Courts are to exercise no power as to naval prize unless specially conferred, for which provision is made in the *Prize Courts Act*, 1894.<sup>2</sup> As regards powers over the Royal Navy these are to be such as may be conferred by Order in Council, and no offence punishable in England on indictment may be tried under the powers of the Act. Any colonial law regulating Admiralty jurisdiction under the Act must, if not previously approved by the Crown through a Secretary of State, be reserved, or contain a suspending clause. In every case an appeal lies of right to the Crown in Council from Admiralty cases,<sup>3</sup> but in the event of the decision being one of a subordinate Court, only after the local appeal, if any. Rules of Court require the approval of the Crown in Council, but in approving the Crown may declare certain rules to be such as may in future be varied without further consent, and rules must not deal with slave trade matters. Power is given to the Crown by commission under the Great Seal to authorize the Admiralty to establish Vice-Admiralty Courts in any British possession with such part of the jurisdiction conferred by the Act as may be desired, and, while such jurisdiction is transferred, the power of any Colonial Court of Admiralty is *pro tanto* suspended. But in a Colony with a representative Legislature or India such Vice-Admiralty Courts can exercise only jurisdiction in prize, as to the navy, as to slave trade matters, the *Foreign Enlistment Act*, 1870, the *Pacific Islanders Protection Acts*, 1872 and 1875, and questions

<sup>1</sup> See, e. g., under 5 Geo. IV, c. 113, *Barton v. Reg.*, 2 Moo. P. C. 19.

<sup>2</sup> Cf. 5 & 6 Geo. V, c. 57 ; 6 Geo. V, c. 2.

<sup>3</sup> *Richelieu and Ontario Navigation Co. v. SS. 'Cape Breton'*, [1907] A. C. 112.

a preliminary decree for accounts and paid court-fees on the value as fixed by plaintiff in his plaint, files along with or pending that, an appeal to the same court against the final decree ascertaining the amount due according to the preliminary decree, he may get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree. Their Lordships observed as follows:—"The decisions on the point are based on the principle that in a suit for accounts, the preliminary and final decrees are only stages of the same proceeding and though for the purpose of appealing two successive stages are now provided by Section 97 of the Civil Procedure Code, the suit or appeal is not fully decided till both stages are completed and therefore the plaintiff or appellant who has already paid the fee provided by the Court-Fees Act cannot be called upon to pay additional fees at the second stage. There are grounds for accepting this view within limits but we may at once point out that we must not be understood as approving its unlimited application.

"To the extent that when the same party, who has filed an appeal against a preliminary decree for accounts and paid court fees on the value as fixed by the plaintiff in the plaint, files along with or pending that appeal an appeal to the same court against the final decree ascertaining the amount due according to the preliminary decree he may get credit in the appeal attacking that amount for the court-fee already paid on the appeal against the preliminary decree, we are prepared to follow and act upon the Calcutta, Patna and Lahore decisions referred to.

*"But there are difficulties in extending the doctrine to cases where the appeal against the final decree is filed after the decision in the appeal on the preliminary decree.* If a plaintiff's suit for accounts is dismissed on the ground that the defendant is not accountable and he appeals and gets a preliminary decree in his favour in appeal, and then in the first court a final decree is passed from which also he appeals disputing the amount decreed, there seems to be little justification for the argument, that he need not pay the fee on the amount disputed in appeal. Similarly in the case of a defendant who has appealed from a preliminary decree, if the appeal is dismissed, and then a final decree is passed from which also he appeals disputing the amount, there seems as little justification for saying that he need not pay the fee on the amount disputed in appeal. In both cases there is no ground for saying that the earlier appeal contemplated consideration of a final decree which had not and which might never come into existence. In those cases the fee in appeal would be governed by art. (1) of the first schedule." See also *Kantichandra Tarafdar v. Radha Raman Sikdar*, 57 Cal. 463 = 33 C. W. N. 743 = 1929 Cal. 815.

The plaintiff valued the relief for recovery of land at Rs. 1,020 and of the mesne profits antecedent to the suit at Rs. 4-199-8-0. The primary court made a decree in favour of the plaintiff, which entitled the plaintiff to recover possession of the land and also to realise mesne

In the Commonwealth, New South Wales and Victoria came under the Act of 1890 only by Orders in Council of 4 May 1911, these colonies having objected to the application to them of the Act of 1890 for no very intelligible reason. The establishment of the Commonwealth did not result in the creation of the High Court as a Colonial Court of Admiralty under the Act of 1890, though under s. 76 (iii) of the Constitution Admiralty jurisdiction may be conferred upon it. From the State Courts in their Admiralty jurisdiction appeals lie to the High Court or to the Privy Council as of right, and there seems no doubt that such appeals would lie of right from Admiralty jurisdiction conferred under the Constitution, as the Act of 1890 would still apply. This was made clear in s. 106 of the Act of 1909 creating the Union of South Africa.

Section 8 of the Act of 1890 provided that nothing should affect the destination of droits of Admiralty, or droits of or forfeitures to the Crown, though these might be surrendered by the Crown by Order in Council, the intention being to make the surrender conditional on acceptance of colonial responsibility for any damages payable in respect of failure to observe neutrality, the Imperial Government having paid the damages caused by the negligence of the Victorian Government as to the *Shenandoah* in 1865.<sup>1</sup> No arrangements were arrived at, and now the obligation to observe neutrality would be borne by the Dominion concerned, just as it has always been responsible for damage done on land to foreigners, as in the case of the riots at Fortune Bay in Newfoundland in 1878<sup>2</sup> and the Vancouver riots of 1907.<sup>3</sup> In point of fact it appears fairly certain from the Imperial Acts granting Constitutions to New South Wales, Victoria, Western Australia, and approving the Constitution of Queensland<sup>4</sup> that the Crown had already surrendered its droits, and the South Australian<sup>5</sup> and Tasmanian<sup>6</sup> Constitutions aimed at the same result, though technically as local Acts they could hardly have this effect. The droits were not included in the Act

<sup>1</sup> Morris, *Memoir of George Higinbotham*, pp. 83-93. Jamaica, a Crown Colony, had to pay half the cost of the illegal detention of the *Florence*; *Parl. Pap.*, C. 3453, 3523.

<sup>2</sup> *Parl. Pap.*, C. 2184, 2717, 2757, 3059, 3762.

<sup>3</sup> *Canadian Annual Review*, 1907, p. 391.

<sup>4</sup> 18 & 19 Vict. cc. 54, 55; 24 & 25 Vict. c. 44; 53 & 54 Vict. c. 26.

<sup>5</sup> No. 2 of 1855-6.

<sup>6</sup> 18 Vict. No. 17.

the order would be a decree and appealable as such. *Shankar v. Gangaram*, 52 Bom. 360 = 1928 Bom. 236.

### Partnership Suits.

**Order 21, Rule 50, C. P. C.**—An order made under O. 21, r. 50 (3), determining the liability of any person as being a partner in a firm for a decree passed against the firm is a decree and an appeal against it requires *ad valorem* court-fee the matter being governed by Sch. I, Art. 1 and not by Sch. II, Art. 11. *Vallidappa Chetty v. Rangaswamy Naicker*, 35 I. C. 429; *Bhutnath Ja v. Barindra M. Bhattacharjee*, 60 Cal. 530 = 1933 Cal. 546 = 37 C. W. N. 227; *Jugal Kishore Gulab Singh v. Dina Nath Sri Ram*, 1930 Lah. 825; 35 P. L. R. 565 = 1934 Lah. 958.

### Mortgage Suits.

**Order absolute for sale. Order 34, Rule 5.**—(S. 89, Transfer of Property Act).

An order absolute for sale made on an application under O. 34, r. 5, C. P. C. is a decree and an appeal from it requires to be stamped *ad valorem*. *Bajirangi Lal v. Mahabir Kunwar*, 35 All. 476; *Jankibai Ramdayal v. Chinna Sadashiv*, 22 Bom. L. R. 822 = 51 I.C. 579; *Becher Singh v. Becharam Suhu*, 10 Cal L. J. 91. An order dismissing an application under O. 34, r. 5 as barred by limitation is a decree and an appeal from it requires *ad valorem* court-fees. *Charu Chandra Mitter v. Bhairath Prasad*, 12 C. W. N. 1028. An order dismissing an application for a final decree in a suit for a sale on a mortgage, is not an order under s. 47 C. P. C., but a decree in the suit and is appealable as a decree under s. 96, C. P. C. *Subbalakshmi Ammal v. Ramanujam Chetty*, Curgenven, J., 42 Mad. 52. An order refusing to pass a final decree under O. 34, r. 5 on the ground that the preliminary decree has been appealed against is not a decree and is not appealable. Appeal 425 of 1927 (Madras, unreported). A mortgagee asked for a final mortgage decree for sale of the mortgaged properties to recover the balance of the mortgage money whereupon the mortgagor filed an objection to that application on the alleged agreement to extend the time for payment of the balance of the money. The trial court held that it could not recognise the adjustment because no application to have it recorded had been made within the time limited by law, and gave the mortgagee a final decree for sale of the mortgaged properties. The mortgagor claimed to be entitled to appeal as if it were an order in execution. It was held that it was not an order in execution but was a judgment in the mortgage suit and if the mortgagor desired to appeal, he must appeal against the final decree for sale of the mortgaged property and must stamp his appeal *ad valorem*. *Ahmed Rahaman and others v. A. L. A. R. Chettyar Firm* 6 Rang. 285 = 1928 Rang. 194. An appeal against a final decree on the ground that the mortgagor should or should not have been allowed further time is not an exception to the general rule that an appeal against a final decree requires an *ad valorem* fee. There is no diffe-

offence on any British ship anywhere, or on any foreign ship to which he does not belong, and any alien committing any offence on any British ship on the high seas only. Section 687 gives Admiralty jurisdiction in the case of any master, seaman, or apprentice, in respect of any offence committed ashore or afloat, against property or person, if he is a member or has within three months before been a member of the crew of a British ship. Section 478<sup>1</sup> again allows the Legislature of any possession to provide for inquiries into shipwrecks and casualties and accusations of misconduct by masters, mates, and engineers, in the case of the matters involved happening off or near the coast of the possession, or to British vessels *en route* to the possession, or happening anywhere to a vessel registered therein, or where members of the crew or the offending person are found within the possession. An inquiry must not be held if one has already taken place in a competent Court, or the certificate of a master, mate, or engineer has been cancelled or otherwise dealt with by a Naval Court. No inquiry may be begun if one has been started in England. The Court has the power to cancel or suspend a certificate, but the Board of Trade may order a rehearing, and an appeal lies to the High Court.<sup>2</sup> No appeal, however, lies in the case of a vessel registered in the possession where the inquiry takes place, nor unless the certificate affected was granted in the United Kingdom or in some other British possession. It is, however, provided in s. 474 of the Act that the Board of Trade may return, if it thinks fit to reduce the period for which it has been suspended, any certificate dealt with in any Court, a provision which caused much annoyance in the Commonwealth, and led to proposals for its curtailment in the Navigation Bill.<sup>3</sup>

Further powers are conferred on colonial Courts by a number of Acts, such as the *Slave Trade Acts*, the *Pacific Islanders Protection Acts*, 1872 and 1875, the *Foreign Enlistment Act*, 1870, the *Fugitive Offenders Act*, 1881, as regards crimes committed

<sup>1</sup> Formerly 17 & 18 Vict. c. 104, s. 242; 25 & 26 Vict. c. 63, s. 23; 45 & 46 Vict. c. 76 (passed to undo the result of *In re Victoria Steam Navigation Board*, 7 V. L. R. 248).

<sup>2</sup> Cf. *The Chilston*, [1920] P. 400, where it was ruled that a decision of a local Court of Inquiry could be overruled, despite the Canadian Act, 7 & 8 Edw. VII, c. 65, s. 37. See *S. R. & O.* 1923, No. 752, s. 19.

<sup>3</sup> Keith, *Imperial Unity and the Dominions*, p. 228.

it must, if at all, be appealable only as an order. But it is not one of the appealable orders mentioned in O. 43. The result contemplated by His Lordship that if the judgment-debtor appealed against both he would have to pay court-fee twice over is therefore it is submitted not correct. The decision has since been dissented from by a Division Bench in *Ramachandra Rao v. Rathayya*, 66 M. L. J. 178 = 39 L. W. 185.

### Personal decree.

**Order 34, r. 6, C. P. C.**—(s. 90, Transfer of Property Act).

An order allowing an application for a personal decree under O. 34, r. 6 is a decree in the suit and not a proceeding in execution. *Rama Venkatasubba Iyer v. Shanmukham*, (1913) M.W.N. 867. An appeal from such an order requires *ad valorem* court-fees. *Lakhi Narain Jagdeh v. Choudhury Kirtibas Das*, 18 C. L. J. 133; *Syed Wasi Ali v. Jang Bahadur Singh*, 30 I. C. 497; 14 A. L. J. 328 = 35 I. C. 158; *Kartick Chandra Roy v. Asha Ram Agarwalla*, 39 C.W.N. 315. The fact that an appeal by the mortgagor against the preliminary decree for sale on which he has paid *ad valorem* court-fee is pending makes no difference. *Kartick Chandra Roy v. Asha Ram Agarwalla*, 39 C. W. N. 315.

An order dismissing an application under O. XXXIV, r. 6 as barred by limitation is a decree in the suit and is not an order in execution and an appeal from it must be stamped with *ad valorem* court-fee. *Muhammad Ilfat Hussain v. Alimunnissa Bibi*, 40 All. 553.

**Appeal disputing personal liability.**—Where the appellant in an appeal against a mortgage decree ordering the sale of the mortgaged property and enabling the plaintiff to apply for a personal decree for any balance left after the sale, does not dispute the liability of the property but disputes only his personal liability, the value of the subject-matter of the appeal is not the whole mortgage amount but the excess of the mortgage amount over the net sale proceeds for which alone he is by the decree likely to be made liable. *Venkatarama Sastrigal v. Sabapathy Thevar*, 57 Mad. 632 = 66 M. L. J. 348 = 39 L. W. 648 = 1934 Mad. 230. But unless the appeal is filed after the sale is held,—and this is not possible in all cases, as sale may not be held within the period of limitation for filing the appeal,—it is not possible to ascertain this excess. There would then be an insurmountable difficulty in valuing the appeal which may have to be treated as incapable of valuation. But as the new form of decree prescribed by the Code (See Nos. 5 and 5-A of App. D) leaves the question of personal liability open till after the sale is held and the deficiency ascertained, courts need not give any finding as to personal liability at that stage of the proceeding. It would be time enough to pass a personal decree for the balance under O. 34, r. 6 after the sale is held and a balance is still left. See also under Sch. II, Art. 17 (vi) for decisions holding that an appeal solely about personal liability is incapable of valuation.

### III

## JUDICIAL APPEALS

### § 1. *The Prerogative in the Dominions*

THE prerogative of the Crown to hear appeals from Dominion Courts was, incidentally but effectively, made statutory by the *Judicial Committee Act*, 1844, which gives the power to the Crown in Council to provide for appeals from any Court of Justice in any British Colony or possession. This statutory right, the importance of which was long overlooked in discussions of the matter, was stressed by the writer on various occasions, and was finally expressly applied by the Privy Council in *Nadan v. The King*<sup>1</sup> on appeal from the Supreme Court of Alberta, Appellate Division. It was objected that under s. 1025 of the Criminal Code of Canada 'notwithstanding any royal prerogative or anything contained in the *Interpretation Act* or the *Supreme Court Act* no appeal shall be brought in any criminal case from any judgement or Order of any Court in Canada to any Court of Appeal or authority by which in the United Kingdom appeals or petitions to His Majesty in Council may be heard'. The Privy Council indicated that the Act did not appear to apply to action in the United Kingdom, but frankly admitted that it was repugnant to the *Judicial Committee Acts* of 1833 and 1844, and, therefore, void. The Privy Council in this case did not decide whether the Act was sufficient to render invalid the permission to appeal to the Privy Council granted by the local Court, but assumed that it might be. This, however, is clearly wrong, for the Order in Council regulating appeals from Alberta on the strength of which leave was granted is an Imperial Order made under the authority of the Act of 1844, and clearly overrides the Act of Canada as effectively as the Imperial Act itself. The Council refused to grant special leave, as the case was criminal and did not fall under the category of cases where it is shown that by a disregard of the forms of legal process or by the violation of the principles of natural justice or otherwise, substantial and grave injustice has been done. It will be seen, therefore, that

<sup>1</sup> (1926) 42 T. L. R. 356. See *Imperial Unity and the Dominions*, pp. 368 ff.

grounds, interest from date of suit to date fixed for payment, which had been denied to him by the decree of the lower court, it was held by the Bombay High Court that the claim for future interest was not chargeable with court-fees, as no fee was chargeable under s. 7 cl. 1 of the Act for future interest or profits claimed in a suit. It should be noted that this Bombay case was before the amendment of the Court-Fees Act in 1908. Before the amendment it was thought in some quarters that the Article was not a substantive provision but only an auxiliary provision for merely calculating the amount of fees chargeable under the substantive provisions in s. 7. The amendment approves the view that the Article is a substantive provision by itself, applicable to appeals, to which s. 7 does not apply. S. 7 applies only to suits. See note *supra* at pp. 412-414 under the heading, "Is Article 1 a substantive provision?". This Bombay ruling, it is submitted, is not good law now. In *Bhavani Prasad v. Kutub-unissa Bibi*, (1905) 27 All. 559, where the plaintiff in a mortgage suit appealed claiming interest from date fixed for payment until realization, the Allahabad High Court held that the claim was incapable of valuation and that court-fee was payable under Sch. II Art. 17. In a recent case *Damodar Prasad v. Hardeo Prasad*, 52 All. 1029=1931 All. 351, where the plaintiff who had sued for money and was given decree for a portion of the claim, with future interest from the date of the decree, but without *pendente lite* interest from date of suit to date of decree, appeal for the rest of the suit amount and also for *pendente lite* interest, it was held that the claim for *pendente lite* interest was a part of the subject-matter in dispute in appeal within the meaning of Sch. I Art. 1 of the Act and that *ad valorem* court-fee was payable thereon. His Lordship observes at p. 1030, "Under Article 1, Schedule I, the memorandum of appeal must be stamped *ad valorem* on 'the amount or value of the subject-matter in dispute'. When the appellant has expressly claimed a definitely ascertainable sum by way of *pendente lite* interest, which was disallowed by the trial court, I think that sum must be held to be a part of 'the amount or value of the subject-matter in dispute'. Otherwise, if the appeal had related to *pendente lite* interest only, we should be forced to hold that there was no 'subject matter in dispute' in the appellate court, and such a conclusion seems absurd". These Allahabad decisions were referred to with approval by the Lahore High Court in *Bhagh Shah v. Labha Mal*, 1933 Lab. 941, where the plaintiff preferred an appeal claiming (1) portion of the suit amount and (2) interest from date of suit to date of realisation both of which had been disallowed by the lower court but he paid no court-fee for claim No. (2). It was held that as no *ad valorem* fee on the amount calculated up to date of appeal or at least a fixed fee of Rs. 10 under Sch. II Art. 17 (6) was paid according to either of the Allahabad decisions, the deficiency whatever it is could not be allowed to be made good at that late stage of the case, and the court dismissed the appeal with regard to the claim for interest. As the court was inclined to dismiss the claim for



if in its opinion the question involved is one which, by reason of its great general or public importance or otherwise, ought to be submitted to the King in Council for decision. Appeals by special leave may be granted on any ground thought sufficient by the Privy Council, but its practice varies from time to time. Criminal appeals, as has been mentioned, it is most reluctant to hear,<sup>1</sup> though it consented to do so in the famous case of the Canadian rebel *Riel*,<sup>2</sup> whose fate aroused extraordinary bitterness in Canada, thus rendering the intervention of the Privy Council advisable, while serious points of law arose for decision. In *Carey v. Roots*, on 7 May 1914, the Privy Council declined to allow an appeal in the case of a matter of considerable importance, where the Supreme Court had reversed a decision of the Appellate Division of the Supreme Court of Alberta, the Lord Chancellor remarking that in the past there had been some laxity in admitting such appeals, as the *Supreme Court Act* of the Dominion indicated the desire that appeals should be as few as possible.<sup>3</sup> In point of fact that Act was originally drafted to seek to cut off the appeal, but it was altered to save the prerogative, when it was intimated that it would otherwise not receive the royal assent. There has been shown distinct reluctance to grant leave to appeal from the Appellate Division of the Supreme Court of the Union.<sup>4</sup> In 1925 the question of appeals from the Irish Free State came before the Privy Council. The appeal lies under Article 66 of the Constitution, having been introduced by reason of the application<sup>5</sup> to the Free State of the status of a Dominion with a Constitution like that of the Dominion of Canada, and the suggestions that no appeal lies are absurd. But the Council declined to hear an appeal where the issue involved was the right of a Bishop of the Roman

<sup>1</sup> *Lanier v. R.*, [1914] A. C. 221; *Vaithinatha Pillai v. King Emperor*, 40 Ind. App. 193; *Bugga v. K. E.*, [1920] W. N. 88; *Keith, J. C. L.* viii. 133; *Dal Singh v. K. E.* (1917), 86 L. J. P. C. 140.

<sup>2</sup> (1885) 10 App. Cas. 675. Contrast *Falkland Islands Co. v. Reg.*, 1 Moo. P. C. (N. S.) 299, 312; *In re Dillet* (1887), 12 App. Cas. 459; *Tshingumuzi v. A.-G. of Natal*, [1908] A. C. 248; *In re Carew*, [1897] A. C. 719; *Kali Nath Roy v. K. E.*, 37 T. L. R. 162; *Arnold v. K. E.*, [1914] A. C. 644.

<sup>3</sup> *Albright v. Hydro-Electric Comm.*, [1923] A. C. 167, 169.

<sup>4</sup> *Whittaker v. Durban Corporation* (1920), 36 T. L. R. 784. The principles there asserted have been chiefly honoured in the breach.

<sup>5</sup> *Keith, J. C. L.* vi. 204 f.; iv. 233 f.

(unreported) to a case of future mesne profits in Madras by Wallis, C. J., who held that the value of an appeal by defendant from a decree for possession with future profits at a certain rate includes the future profits calculated at that rate from the date of plaint till date of Appeal. See also observations in *Punya Nahako v. King Emperor*, 50 Mad. 488 (493) that a defendant appellant who seeks to be relieved from the payment of mesne profits must pay court-fee on such mesne profits up to date of his appeal memorandum. When the mesne profits have been ascertained the court-fee is payable on the ascertained rate. In *Maiden v. Janakiramayya*, 21 Mad. 371 it was held that no stamp duty was payable by the defendant-appellant in respect of mesne profits subsequent to institution of suit. This decision however was based on *Ramakrishna Bhikaji v. Bhimabai*, 16 Bom. 416, where it was held that before executing a decree granting future mesne profits, the decree-holder was not bound to pay any court-fee, as s. 11 of the Court-Fees Act applied only to a claim for past mesne profits and not to future mesne profits. It is submitted that whether or not s. 11 applies to future profits ascertained and sought to be recovered in execution proceedings, it applies only to proceedings in execution, and cannot apply to a memorandum of appeal, which has to be charged to court-fees according to its subject-matter under Sch. I, Art. 1 of the Act. See commentary under the heading "O. 20, r. 12 C. P. C.," *supra*. Further these decisions were given before the amendment of Sch. I, Art. 1 in 1908, at a time when it was thought that the said Art. 1 was not a substantive, but only a mere auxiliary provision. *Vide* notes under the heading "Future Interest" *supra*. And in Madras s. 11 has been made applicable to future mesne profits by the amending Act of 1922. It is submitted therefore that the decision in 21 Mad. 371 is no longer good law.

As regards cases where there has been no ascertainment of mesne profits, see note *supra* under the heading "Appeal against preliminary decree directing ascertainment of mesne profits."

**Costs.**—When apart from and independently of any other reliefs which an appellant seeks in an appeal from a decree, he seeks relief on the ground that the costs of the proceedings have not been properly assessed or apportioned by the decree, he makes the costs the subject-matter of dispute, and must pay stamp duty thereon. *Reference under the Court-Fees Act*, 19 Mad. 350=4 M. L. J. 148; see also *Fateh Sing v. Manj Rai*, 35 P. L. R. 656=1934 Lah. 739. When an appeal against costs is distinct and separate from the other parts of the appeal, court-fee must be paid *ad valorem* on the costs decreed. *Rawlins v. Lachminarain*, 3 Pat. L. J. 443=44 I. C. 50. But in *Jyoti Prasad Singha v. Jogendra Ram*, 56 Cal. 188=32 C. W. N. 1105, it was held by the Calcutta High Court that in an appeal regarding costs in a partition suit a fixed court-fee is payable as in the suit. For further comment on this case, see note under Sch. II Art. 17 under the heading "Plaint or memorandum of appeal in a suit". In *Kanai Kamesi Debi v. Rangpore*, North Bengal Bank, 25

questions, and it very often decides cases on some comparatively minor issue evading a decision of large questions, on the principle that these matters should be disposed of only when they are absolutely necessary for the decision in a concrete case.

In the case of Canada, the Commonwealth, and the Union there is no appeal as of right, all appeals requiring special leave. Suitors in the first two cases have the choice of appealing to the Privy Council or the Supreme or High Court respectively, but, if a suitor chooses the latter, he will have great difficulty in being permitted to appeal again to the Privy Council ;<sup>1</sup> on the other hand, a suitor who has been taken to the Dominion or Commonwealth Court on appeal will more readily be permitted to carry the matter to the Privy Council. As of right, an appeal normally lies from the highest Appellate Court in any territory, and it is rare to allow an appeal direct from any lower Court. There are, however, exceptions, as under the law of Quebec and in New Zealand where appeals can be brought by special leave, or leave of the Court itself, from the Supreme Court in cases where there is no appeal to the Court of Appeal.

The rules as to appeals were, as mentioned, simplified and enacted, usually by Order in Council, after the Colonial Conference of 1907, which pointed out the desirability of bringing the old rules up to date with a view to accelerating procedure and removing technical delay. It was agreed also that the Courts below should be given power to grant special leave. Regulation by local Act thus exists only in Ontario, Quebec, and Newfoundland. In Quebec there was much indignation<sup>2</sup> in 1913-14 against the Privy Council for its decision that certain legislation as to estate duties by the province was invalid as indirect taxation, and an Act was passed in 1914 (c. 11), in which the Privy Council was directly assailed, and it was provided that the impugned tax was a direct tax, and recovery of sums paid under it was prohibited. The Privy Council in its judgement had made in point of fact a misstatement, which should not have occurred in the judgement of a final tribunal,<sup>3</sup>

*Murray*, [1903] A. C. 521 ; *C. P. R. Co. v. Blair*, [1904] A. C. 453 ; *Victorian Rail. Comm. v. Brown*, [1906] A. C. 381.

<sup>1</sup> *Victorian Railway Commrs. v. Brown*, 3 C. L. R. 1132.

<sup>2</sup> Keith, *Imperial Unity and the Dominions*, pp. 376 ff.

<sup>3</sup> *Cotton v. R.*, [1914] A. C. 176. The habit of delivering one judgement only

fixed fee was payable under Sch. II, Art. 17. *Lakhan Singh v. Ramkishan Das*, 40 All. 93. That was a case where the plaintiff sued for certain declarations. The suit was partly decreed and partly dismissed. The plaintiff appealed against the portion of the decree disallowing his claim and paid a fixed court-fee under Art. 17. The defendant filed a memorandum of cross-objections. It was held that *ad valorem* court-fee was payable even though the appellant paid only a fixed court-fee. The learned Judge observes "The only place in the Court-Fees Act in which cross-objections are mentioned is Art. 1 Sch. I of the Act. Under that Article the cross objection must bear an *ad valorem* fee according to the value of the subject-matter in dispute. Art. 17, Sch. II though it relates to a plaint or memorandum of appeal in the classes of suits mentioned therein does not relate to cross-objections filed in similar suits. This Act was amended when Act V of 1908 was passed and the words 'or cross-objection' were added to Art. 1 of Sch. I but not to Art. 17 of Sch. II. Under the former Article, the cross objection must pay an *ad valorem* fee according to the value or amount of the subject-matter in dispute. In the present case, the respondent has valued the relief which he seeks in his cross-objection at Rs. 1,000. He must therefore pay this large fee when the appellant in the case can appeal on payment of only Rs. 10. It appears to me that this is perhaps due to an oversight at the time when Act V of 1908 was passed in not adding the words 'or cross-objection' to Art. 17 of Sch. II." This decision was followed by the Patna High Court in *Daroga Rant v. Paramakuer*, 3 Pat. L.J. 917-45 I. C. 568, where the learned Judge thought that the words were deliberately omitted from Art. 17 so as to make cross-objections in appeals in suits under Sch. II, Art. 17 liable to *ad valorem* court-fee and observed "An unsuccessful litigant genuinely desirous of one of the reliefs contemplated by Art. 17 is at liberty to file an appeal forthwith irrespective of any action that may be taken by his adversary, and pay on the appeal a court-fee of Rs. 10. If he asks for such a relief only because his adversary has preferred an appeal, he will be required if his own appeal is time barred to pay an *ad valorem* court-fee. If the appeal is not time barred he should seek his remedy by a regular appeal, not by a cross-objection." See also *Harnam Singh v. Bahu Rani*, 1933 Oudh 528 and *Abdul Subhan Khan v. Musarat Ali Khan*, 155 I. C. 293=1935 O. W. N. 505, in which the Lucknow High Court takes the same view. But in a recent case the Allahabad High Court has held that a cross-objection in a declaratory suit where no other relief is asked for, does not require *ad valorem* court-fee. The judge observes: "In my opinion the Act lays down the principles for court-fees and the schedules merely apply those principles in detail. The principles of the Act to be deducted from s. 7, is that *ad valorem* court-fees are not to be charged in a declaratory suit where consequential relief is not prayed for. On that view the omission of the words "cross-objection" in Schedule II, Art. 17 (iii) is a clerical error and it is no doubt intended that by a memorandum of

Ontario,<sup>1</sup> and the matter is still open to doubt. In the case of the decisions of the English Court of Appeal Anglin J. left the matter open. The case is clear enough, though it has been misunderstood. In *Trimble v. Hill*<sup>2</sup> on appeal from New South Wales the Privy Council laid down the quite sound rule that, where a Colony had adopted verbatim an English Act, and that Act had been interpreted by the Court of Appeal—the argument applies, of course, with still greater force to the House of Lords—the Colonial Court should accept the doctrine laid down by the Court of Appeal. This has occasionally been interpreted as indicating a general rule of following the Court of Appeal decision, but for this there is no warrant.<sup>3</sup> Naturally due regard will be had to the decisions of so excellent a tribunal, but they are not binding, and when they differ from the views of the Privy Council have no value.

Otherwise the rules in the Dominions accord in general with those in the United Kingdom. Curiously enough, Ontario legislates<sup>4</sup> to provide by law an obligation which elsewhere is allowed to rest on usage. It provides that the decision of a Divisional Court is binding on all Divisional and other Courts of Justice and shall not be departed from without the concurrence of the judges who gave the decision, while any judge of the High Court Division must follow a prior known decision of any judge of that Court. An interesting question might arise if it were attempted to hold that these enactments prevented the Courts giving effect to Privy Council rulings in subsequent cases overruling earlier judgements normally binding on the Court, but it cannot be supposed that anything so absurd would be held. In the case of decisions *at nisi prius* the rule in Canada<sup>5</sup> seems clearly to accord judges the right to disregard them if they are satisfied that they are not correct.<sup>6</sup>

<sup>1</sup> *Slater v. Laboree* (1905), 10 O. L. R. 648.

<sup>2</sup> 5 App. Cas. 542.

<sup>3</sup> 4 *Can. Bar. Review*, 404 f.; *Paradis v. The Queen* (1887), 1 Ex. C. R. 191, 193; *Manitoba Bridge and Iron Works v. Minnedosa Power Co.*, [1917] 1 W. W. R. 731, 738.

<sup>4</sup> *Judicature Act*, R. S. O. 1914, c. 34, s. 32.

<sup>5</sup> *Williams*, 4 *Can. Bar Review*, 301.

<sup>6</sup> As to the distinction of *dicta* and *ratio decidendi*, see *Davidson & Co. v. Officer*, [1918] A. C. 304, 322, *per* Lord Dunedin; *New South Wales Tax Commrs. v. Palmer*, [1907] A. C. 179, 184; *Membery v. G. W. R.* (1889), 14 App. Cas. 179, 187.

*Chaudhry*, 1 Pat. 471. The problem however does not arise in Madras, as memorandum of cross-objections has been made equivalent to memorandum of appeal by the Amendment Act of 1922.

For cross-objections regarding costs. See commentary under the heading "Costs".

**Objection to findings.**—Order 41, rule 22, C. P. C. provides that "any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to the decree which he could have taken by way of appeal". Objections filed by a respondent criticizing the findings of the lower court but supporting the decree are not therefore cross-objections and are not liable to *ad valorem* stamp duty under Sch. I, Art. 1. Where the suit was dismissed and a decree passed entirely in favour of the defendant and the plaintiff appealed against the decree and the respondent then filed an objection to the finding of the lower court against him in the judgment, it was held that the objection was no more than a petition and was not liable to stamp duty as a cross-objection *Bhajan Lal v. Chahat Rai*, 15 A. L. J. 325=39 I. C. 279; *Ram Prasad Kalwer v. Ajanasia*, 44 All. 577; *V. Sahdeo Narain Deo v. Kasum Kumari*, 1 Pat. 258.

**Set off.**—The words "written statement pleading a set off or counter-claim" were inserted in this Article by s. 155 of the Civil Procedure Code of 1908. Written statements not pleading set-off or counter-claim were not before that and are not now liable to payment of court-fees, s. 19, clause (iii). As regards written statements pleading a set-off or counter-claim there was a conflict of decisions before 1908 as regards their liability to court-fees. The Madras, Allahabad and Bombay High Courts held that since s. 111 of the Civil Procedure Code of 1882 provided that a set-off shall have the same effect as a plaint in a cross-suit, it should be stamped as a plaint. *Chennappa v. Raghunadha*, (1891) 15 Mad. 29; *Amir Zama v. Nathu Mal*, (1886) 8 All. 396; *Bai Shri Majirajbai v. Narotam Hargovan*, (1889) 13 Bom. 672. In *Fakir Chandra Dutt v. Gisborn and Co.*, (1903) 8 C. W. N. 174, Justice Bannerjee of the Calcutta High Court differed from the above decision and held that under s. 111, a set-off had the same effect as a plaint only for the purpose of enabling the court to pronounce final judgment in the same suit both on the original and the cross-claim and not for the purpose of court-fees and that therefore a written statement pleading set-off required no court-fee. In *Guisse v. Anantaram Rathi*, (1905) 10 C. W. N. 199, a Division Bench of the same court differed from the opinion expressed by Justice Bannerjee as an *obiter dictum* and held that court-fees must be paid for such written statements. But in *Abdul Aziz v. Razak Ali*, (1913) 17 C. L. J. (F. B.), the judge who made the reference to the Full Bench thought that the written statement in that case which was filed before the passing of the Civil Procedure Code of 1908

in Council of 9 June 1860. This right was questioned on the score that the *Judiciary Act*, 1903, of the Commonwealth had made the exercise of jurisdiction in such cases a federal matter, and had given authority to the State Courts to deal with it only under the rule that the sole appeal lay to the High Court. On the other hand, both the Victorian Court and the Privy Council ruled that the Order in Council was applicable to any jurisdiction, be it federal or otherwise, which the Court lawfully possessed, and, hearing the appeal, the Privy Council allowed it. But the High Court declined to be bound by that decision in *Baxter v. Commissioners of Taxation, New South Wales*.<sup>1</sup> It held by a majority that the Privy Council should have regarded itself as bound by the judgement of the High Court, but Higgins J. dissented, holding that the Privy Council stood on a higher platform, though in one class of cases the High Court could cut off access to that platform, pointing out that the Court for Crown Cases Reserved always followed the Lords, though no appeal lay from the one to the other.<sup>2</sup> The High Court also held that the Privy Council should have ruled that the Order in Council did not apply to federal jurisdiction, and that they would not be doing their duty if they sent a constitutional issue of this kind to the Council. A request for leave to appeal<sup>3</sup> was refused by that body, because *inter alia* the Commonwealth by Act No. 7 of 1907 authorized the levy of income tax at non-differential rates on Commonwealth salaries, and there was no concrete issue to face. The Commonwealth, however, very sensibly removed further difficulty by using the power under s. 77 (2) of the Constitution to define how far the jurisdiction of any Federal Court shall be exclusive of that of a State Court. It simply excluded by Act No. 8 of 1907 the Supreme Court of any State deciding any question as to the constitutional powers *inter se* of the Commonwealth and a State or States or of two or more States, whether on first instance or on appeal. When such a point arises, the case is *ipso facto* transferred to the High Court. Thus an appeal on such an issue can never come to the Privy Council from the State Courts.<sup>4</sup>

<sup>1</sup> 4 C. L. R. 1087. See also *Parl. Pap.*, Cd. 5273, pp. 39, 40.

<sup>2</sup> 4 C. L. R., at pp. 1162, 1163. Contrast pp. 1100-1, 1103, 1117 f., *per* Griffith C.J., Barton and O'Connor JJ.

<sup>3</sup> 5 C. L. R. 398; [1908] A. C. 214.

<sup>4</sup> 35 C. L. R. 69.

amount sued for and there was therefore no excess it was held that court-fee was payable. On the other hand the Nagpur Court has held that court fee is payable only on the amount claimed in the written statement in excess of that claimed by the plaintiff and only if the defendant wants a decree for that excess. *Ramangir v. Achharam*, 1927 Nag. 74. It would appear from the report of the case that it was an equitable set-off that was claimed there, and so the decision that the court-fee is payable only for the excess applies perhaps only where equitable set-off is claimed. In *Fetei Mahamad Haji Suleman v. Ramsan Khan*, (1914) 27 I. C. 316, and *Jessaram Dhanuram v. Isardass*, (1914) 27 I. C. 320, the Sind Court held that no court-fee was payable for equitable set off until after the amount has been ascertained, and that even if a definite amount is claimed as equitable set-off no court-fee was payable until after the amount was ascertained by the court as the defendant was not bound to state any definite amount in such a case in his written statement. In *Tayaballi Gulam Hussain v. Atmaram Sakhrum*, (1914) 38 Bom. 631, it was held the equity arising from a cross debt could be set up by the defendant without payment of court-fee.

Where the written statement pleads a set off within the meaning of Art. 1 of Sch. I of the Court-Fees Act and it does not bear proper court-fee the court is debarred by the Court-Fees Act from acting on it and going into the question of set-off, *Muthu Erulappa Pillay v. Venku Thaikayya Maistry*, (1916) 36 I. C. 957. See also *Mahammad Raza v. Kubra Bibi*, 15 I. C. 526. But in *Jugal Kishore Narain Singh v. Bankey Behari Lal*, 16 Pat. L. T. 76=1935 Pat. 110, it has been held that the court is not precluded from considering the question of set off even if the written statement does not bear the requisite Court fee at the time it is filed, and that under s. 149, C. P. Code the court has a discretion, even where no part of the court-fee has been paid, to allow the party by whom the court-fee is payable to pay it at any stage.

A plea of payment is different from one of set off. The deduction which under s. 108 (f) of the Transfer of Property Act, the lessee is authorized to make for the expenses of repairs from the rent as it becomes due, is in the nature of a payment to the landlord and does not bear the character of a set-off, *Katie Graham v. Colonial Government of British Guiana*, (1910) 12 C. L. J. 351.

**Counter-claim.**—The word counter-claim is not defined in the Court-Fees Act and is nowhere used in the Code of Civil Procedure. In Webster's Dictionary and in Wharton's Law Lexicon a counter-claim is defined as exactly the same thing as set-off. But Ameer Ali and Woodroffe give the word a meaning which seems more properly to belong to the English word "Cross-claim", which of course is a very wide term. A counter-claim is a form of suit unknown to the Code of Civil Procedure, but there is nothing to prevent a judge treating the counter-claim as the plaint in a cross-suit and hearing the two



In the case of the Union of South Africa<sup>1</sup> the restriction is simple. In the first place no appeal at all rises from inferior Courts, but only from decisions of the Appellate Division of the Supreme Court, and no appeal lies as of right, save in the case of appeals under the *Colonial Courts of Admiralty Act*, 1890, which is not in fact a true exception, the jurisdiction thus exercised being really Imperial jurisdiction delegated to a Colonial Court.

In the case of the Irish Free State it is clear from the Constitution that appeals from the High Court to the Supreme Court may be barred by Parliament save as regards constitutional cases, involving the interpretation of the Constitution.<sup>2</sup> From the Supreme Court alone according to the Constitution may appeals be brought by special leave. It may be noted that this limitation is foreign to the scheme of the Canadian Constitution, which under the Treaty of 1921 is the model for the Irish Constitution, and it may be that the limitation on the Constitution is *ultra vires*, but it is most improbable that the Privy Council, which mingles political wisdom with legal interpretation, would hold so inconvenient a doctrine, and one which would merely result in legislative reversal of the Court's findings, where legislation was possible.<sup>3</sup>

### § 3. *The Constitution and Future of the Judicial Committee*

The Judicial Committee of the Privy Council, as constituted under the Act of 1833 and later Acts, essentially consists of all Privy Councillors who hold or have held high judicial office, including, of course, past and present Lord Chancellors; past and present Lords Presidents of the Council; two Privy Councillors specially designated by the Crown—distinguished lawyers like Syed Ameer Ali or Mr. Asquith; and paid Indian judges, with a facultative representation of Dominion judges. The latter was first provided for by an Act of 1895,<sup>4</sup> which allowed such members of the highest tribunals of Canada and the Provinces, the Australian and South African Colonies, but not Newfound-

<sup>1</sup> 9 Edw. VII, c. 9, s. 106.

<sup>2</sup> Keith, *J. C. L.* iv. 233 f.

<sup>3</sup> This mode of action was pointed out by me to Mr. D. Figgis as solving any problem in this regard without efforts to evade the Treaty.

<sup>4</sup> 58 & 59 Vict. c. 44. Cf. Walker, *Lord de Villiers*, pp. 116 ff. The agitation began in earnest in 1888.

could only be set in motion to recover large claims by persons of very great wealth."

The rule laid down in s. 17 regarding multifarious suits is subject to this proviso and the maximum fee leviable on the plaint or memo of appeal in such a suit is Rs. 3,000. Oldfield, J., said in *Raghobir Singh v. Dharam Kuar*, 3 All. 108: "It is true that by the terms of Art. I, Sch. I, that Article will not apply to a plaint or memorandum of appeal 'otherwise provided for in the Act', but those words mean a provision fixing the amount of fees chargeable, and a plaint or memorandum of appeal will not come under the operation of Art. 1, Sch. I, for which a proper fee has been provided in some other part of the Act. Now s. 17 of the Act makes no provision of this kind for the proper fee to be charged; it merely lays down a general rule that, where a suit embraces two or more distinct subjects, the plaint shall be charged with the aggregate amount of fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under the Act. Section 17 does not pretend to fix the amount of the fee, but, on the other hand, expressly refers to other parts of the Act for the amount, that is, to the schedules, which alone deal with the amount; and the general rule in s. 17 becomes necessarily governed by rules as to the amount of the fee to be found in the schedules, and among them by the proviso in Art. 1, Sch. I, limiting the amount of fee on a plaint or memorandum of appeal of the nature of those referred to in s. 17; for no other part of the Act deals with the amount, and, if the Article is to be applied, it must be applied in its integrity, and with the proviso which it contains fixing a maximum fee leviable, a proviso which is in no way inconsistent with the application of the general rule contained in s. 17, but which governs its application". This decision was approved and followed in *Kashi Prasad Singh v. Secretary of State of India*, 29 Cal. 140.

Although the proviso to Art. 1, Sch. I refers only to the maximum fee leviable on a plaint or memorandum of appeal and leaves out any reference to written statement pleading a set off or counter claim there is no authority for charging a larger sum on a written statement than what is specified as maximum in the Schedule. *Md. Mumtaz Ali v. Md. Sadaab Ali*, 5 Luck 621 = 1930 Oudh 140. Pullan, J., added: "I give my opinion in respect of the maximum fee only, but offer no opinion as to whether in the case of, for instance, a declaratory suit filed on a Rs. 10 stamp a claim for set-off should or should not be charged *ad valorem*."

The maximum fee has been raised to Rs. 10,000 in Calcutta and Bombay, to Rs. 5,000 in Central Provinces and to Rs. 4,500 in United Provinces. The proviso has been omitted altogether in Madras, Bihar and Orissa, and the Punjab by the Amending Acts.

this practice was unwise, was repented of by Canada, and ultimately dropped generally. Under the Act of 1908 the old practice of making an annual order referring appeals to the Judicial Committee has yielded to a single order at the beginning of each reign. But in certain cases, such as those of special reference for the removal of a Colonial judge, it is usual to have others than members of the Judicial Committee present, the matter being one of more than judicial consequence. Connected with the Committee, but not identic in formation, are the Committees provided for the affairs of the Universities of Oxford and Cambridge and the Scottish Universities.

The functions of the Judicial Committee include, besides appeals from the Dominions, Colonies, Protectorates, Courts exercising jurisdiction under the Foreign Jurisdiction Acts, Indian Courts, Courts of the Isle of Man and the Channel Islands, appeals in matters of prize and in all ecclesiastical causes, as well as appeals in a number of minor matters such as the appointments of Councillors in New Zealand and New South Wales and appeals under the *Colonial Courts of Admiralty Act*, 1890. Other minor functions, such as those under the older *Patent Acts* of 1883 and 1902, have been conferred on the Comptroller of Patents. On the other hand s. 4 of the *Copyright Act*, 1911, gives to the Judicial Committee the duty of deciding as to the grant of compulsory licences in respect of a work after the death of the author. The *Endowed Schools Acts*, 1869 and 1873, provide for appeals from schemes for such schools, and the *Union of Benefices Act*, 1860, invokes the intervention of the Council in certain cases, but this matter is now capable of disposal under the new Church legislation system. The Privy Council is not rigidly bound to follow its earlier judgements; it can, if necessary, on fuller consideration overrule an earlier principle if adopted without adequate grounds.<sup>1</sup> It is not bound by the decisions of the House of Lords, though there have not yet occurred any very serious divergences of view, still less by those of the Court of Appeal, from which it has differed distinctly. On the other hand, the English Courts are in no wise bound by

<sup>1</sup> Cf. *Ridsdale v. Clifton*, 2 P. D. 276; *Read v. Bishop of Lincoln*, [1892] A. C. 644. Or it can explain away; cf. *Russell v. The Queen*, 7 App. Cas. 829, with *Toronto Electric Commrs. v. Snider*, [1925] A. C. 396; *Dominion of Canada v. Province of Ontario*, [1910] A. C. 637, as against 14 App. Cas. 46.

**Madras.**—By the Madras Court-Fees Amendment Act, a new Article has been added as Article 2 between Articles 1 and 2 in the main Act so that Article 2 in the main Act is numbered as Art. 3 in the Madras Act. Madras Article 2 runs as follows:—

Plaint or written statement, pleading a set off or counter-claim presented to a court outside the Presidency town in any suit of the nature cognizable by Court of Small Causes when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the subject-matter in dispute does not exceed 5 rupees.	Six annas.
	When such amount or value exceeds 5 rupees, for every 5 rupees or part thereof in excess of 5 rupees up to 100 rupees.	Six annas.
	When such amount or value exceeds one hundred rupees for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.

**Scope of the Article.**—It is intended to show some concession to small cause suits in the matter of court-fees. It may be noticed that the words used in the first column of the Article are "suits of the nature cognizable by Court of Small Causes". This has reference only to the subject-matter of the suit as distinguished from the amount of the claim (23 M. 547 F. B.) As to what are suits which are not cognizable by Courts of Small Causes, see the Provincial Small Cause Courts Act (IX of 1887) II schedule and s. 19 of the Presidency Small Cause Courts Act XV of 1882.

**Court-fee in suit comprising distinct subjects, some of which are of a small cause nature.**—If two sums of Rs. 600 and Rs. 400 respectively are claimed in a suit on two promissory notes, the court-fee is payable on the two sums separately, the court-fee on the second item being calculated at the lower scale prescribed by Art. 2 of Sch. I. *Secretary of State for India v. Ayyaswami Chettiar*, 65 M. L. J. 252 = 141 I. C. 533 = 1933 Mad. 178. Of course no other view is logical in the face of the clear provisions of s. 17 of the Act. Where A sues B on claims  $x$ ,  $y$  and  $z$ , and has to pay *ad valorem* court-fee computed on each of the claims separately, instead on the aggregate value of  $x+y+z$ , this principle should of necessity be applied in cases when such separate valuation secures to the party the benefit of a concessional rate. It is true that by clubbing together such different 'subjects' where it is allowed, the plaintiff converts what each of them really is, *viz.*, a small cause suit into an original suit with all the rights that flow therefrom *viz.* a more formal trial and a right of appeal

ripe for any change as to the House of Lords—the truth being that he and the vast majority of lawyers held that Colonial judges were not good enough to sit on British appeals, but he agreed to meet the views of New Zealand as to assessors, the Act of 1908 above referred to being passed in accordance with this suggestion. In 1911<sup>1</sup> the discussion was again started by a resolution of Australia in favour of the merger of the Lords and the Council, but the Lord Chancellor was obdurate. Instead, he offered a nominal scheme of regarding the two as branches of an Imperial Court of Appeal, of increasing the quorum in both cases to five, and allowing the Council to deliver minority views. New Zealand pressed for Dominion representation by permanent judges, and was in effect reminded that this was possible under the existing law, if the Government were prepared to provide a salary. Australia, the Union, and Newfoundland were not prepared to send over judges, and Canada regarded the matter as affecting too closely the Provinces to be susceptible of proper treatment at the Conference. The only result of the Conference was that the Imperial Government secured the appointment of two further Lords of Appeal on the allegation of the Dominion desires, which were neither expressed nor entertained; that New Zealand sent and paid for a permanent judge until his death; and that the proposal for separate judgements was dropped.

In 1918, after the war efforts had proved the right of the Dominions to an equal share in Imperial affairs, Mr. Hughes reopened the question at the War Conference.<sup>2</sup> He proposed a single Court of Appeal for the Empire, composed of the Lord Chancellor; persons who had held certain high judicial offices; and representatives of India, the Dominions, and the Colonies. Those to represent the Dominions should be chosen after consultation with the Dominion Governments, but without any formal arrangement; the salaries should be Imperial, and the best men for the work to be dealt with should be sought, so that the Dominions would in practice enjoy the same degree of representation as Scotland or Ireland. The proposal was cold-shouldered; the Lord Chancellor saw many difficulties, not

<sup>1</sup> *Parl. Pap.*, Cd. 5745, pp. 214 ff. The effect of the Conference is misunderstood by Walker, *Lord de Villiers*, p. 495.

<sup>2</sup> *Parl. Pap.*, Cd. 9177, pp. 210 f., 243 f.

the Act —G. O. No. 3895 dated 6-12-1927 and Government of Madras Notification dated 11-1-1928.

"To reduce the fee now chargeable under Article 1 of Schedule I of the Madras Court-Fees (Amendment) Act, 1922 (V of 1922), in respect of a plaint or written statement pleading a set off or counter-claim, presented to a Court outside the Presidency Town in any suit filed as a small cause suit, when the amount or value of the subject-matter exceeds Rs. 500 but does not exceed Rs. 1,000, to twelve annas for every ten rupees or part thereof of such amount or value; provided that the full fee shall become payable, if for any reason, the suit cannot be tried as a small cause suit."

The Government were further of opinion that Article 2 gave relief perhaps to cases not intended to be relieved against where the suits though of a Small Cause nature were in fact tried as original suits and declared in the above said G. O. as follows :—

"The Government consider that the fee leviable under Article 1 instead of that leviable under Article 2 of Schedule I to the Court-Fees Act, 1870, as amended by the Madras Court-Fees Amendment Act, 1922, should be levied in respect of a plaint or written statement pleading a set off or counter claim, presented to a court outside the Presidency Town in all suits of the nature cognizable by Courts of Small Causes if the suits are filed as ordinary suits or, having been filed as small cause suits cannot be tried as such. Steps will be separately taken to amend Schedule I to the Court-Fees Act to give effect to this decision." But it may be noted that no steps have been taken till now to achieve that object.

**Appeals.**—Article 2 (Madras Amendment) mentions only plaints, written statements pleading a set off or counter-claim presented to a Court in any suit cognizable by Courts of Small Causes. Contrast with this the wording of Article I which while referring to a plaint, or written statement also mentions memorandum of appeal. The omission of the words "memorandum of appeal" in Article 2 (Madras) makes the Article inapplicable to memorandum of appeals. Does the legislature think that the lower court-fee should be paid in suits of the nature cognizable by Courts of Small Causes only in the trial court and not in the appellate court? Does the nature of the suit change in appeal? There is not, it is submitted, any logical consistency in providing a lower court-fee for such suits where a plaint or written statement is concerned and make it inapplicable for memoranda of appeals. Perhaps the possibility of an appeal in such cases was not adverted to. The fact that the words used in the Article, viz. "suits of a nature cognizable by Small Causes Courts" need not necessarily mean that such suits should be small cause suits has evidently been overlooked. Else there is no justification while permitting the levy of a lighter court-fee on a plaint in a suit of a small cause nature even though tried as an original suit, to deny the same when an appeal is preferred against the decree.

In Canada the appeal is undoubtedly popular with the majority of lawyers, partly because there is still in the Dominion a certain fondness<sup>1</sup> for the status of Colonial dependence with its assurance of protection; partly because the appeal is not merely a source of great profit personally but brings them into contact with the busy life of the capital of the Empire. Opposition to the appeal is mainly visible in men like Messrs. Ewart and Raney and the late Sir W. Meredith, who feel that the time is past when a great Dominion should accept the position of dependency. The French Canadian attitude is naturally one of support for the Privy Council, except when it overrides Quebec Acts, when it can be abused with truly Gallic vivacity. It is believed in Quebec that the best security for the autonomy of the province and for the maintenance of its language rights lies in the Privy Council, and many Canadians who recognize the difficulty of status hold it is better to maintain the appeal in view of racial questions, comparing such external references as those of independent States to the Hague tribunal or the Permanent Court of International Justice. The same argument is occasionally adduced as regards the Union, but it has much less value, for the Union Constitution admits of easy alteration, and contrasts, therefore, decisively with the rigid Dominion Constitution. Moreover, the fact that in the Commonwealth constitutional appeals have been in effect barred, and that Australia is satisfied with the state of affairs, proves that there is no inherent necessity for having appeals even on such issues decided outside the Commonwealth. But, if these issues are discarded, it passes the wit of man to see what purpose is served by having appeals on ordinary matters of law decided in England.<sup>2</sup> That a suppliant should be at liberty to beg the

<sup>1</sup> Seen in the acceptance by Mr. Meighen of responsibility for Lord Byng's refusal to dissolve Parliament on Mr. King's advice, and the approval of many Canadian Colonials.

<sup>2</sup> Can it seriously be said that appeals were desirable in the Union cases, *Marshall's Syndicate Ltd. v. Johannesburg Consol. Investment Co.*, [1920] A. C. 421; *Minister of Railways v. Summer & Jack Prop. Mines Ltd.*, [1918] A. C. 591; *B. S. A. Co. v. Lennox Ltd.*, 85 L. J. P. C. 111; *Indian Immigr. Trust Board of Natal v. Govindsamy*, [1921] A. C. 423; *Madras Anjuman Islamia of Kholwad v. Mun. Counc. Johannesburg*, [1922] 1 A. C. 500; or the Canadian cases, *Fournier v. Canadian National Railway Co.* (1926), 42 T. L. R. 629; *Letang v. Ottawa Electric Railway Co.*, *ibid.*, 596? If local judges cannot settle

## Article 5.

Application for review of judgment, if presented before the ninetieth day from the date of the decree.	} ...	... { One-half of the fee leviable on the plaint or memorandum of appeal.
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### COMMENTARY.

See also commentaries under s. 14 *supra*,

These two Articles apply to the fee leviable in cases of applications for review of judgment.

**Review.**—It is provided by s. 114 of the Civil Procedure Code that any person considering himself aggrieved,

(a) by a decree or order from which an appeal is allowed by the Code but from which no appeal has been preferred

(b) by decree or order from which no appeal is allowed by the Code or

(c) by a decision on a reference from a Court of Small Causes may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order as it thinks fit.

For detailed rules as to when such an application for review lies, see O. 47 of the Civil Procedure Code.

**Limitation.**—*Vide* Articles 161 and 162 and 173 of the Limitation Act. The period for an application for review of judgment by a Provincial Small Causes Court is 15 days from the date of the decree and in the case of the High Court in the exercise of its original jurisdiction it is 20 days. In the case of the other courts it is 90 days.

### Computation of time.

#### (a) General.

In the first place, it should be noted that the computation for the purposes of limitation is quite a different thing from the computation of the time fixed for the purpose of court-fees. The Limitation Act is not in *pari materia* with the Court-Fees Act. See *In re Kota*, 9 M. 134. See also commentaries under s. 14 *supra*.

#### (b) For limitation.

(1) The applicant is entitled under s. 12 of the Limitation Act to deduct the time spent in obtaining copy of the decree. *Fazal v. Umar*, 88 I. C. 1929=1925 Lah. 377.

(2) If the last day for filing the application falls on a Sunday or a holiday, s. 4 of the Limitation Act enables the filing of the petition on



less chance of a decision on an important subject being left to a rather scratch crew. It is difficult to deny that the decision of the House of Lords in *London Joint Stock Bank v. Macmillan*,<sup>1</sup> which asserts that a customer owes a duty to a bank not to be negligent by leaving blanks in a cheque which can be filled in by a forger, is preferable to the ruling of the Privy Council in *Colonial Bank of Australia v. Marshall*.<sup>2</sup> Moreover, in *Casdagli v. Casdagli*,<sup>3</sup> the House of Lords affirmed the perfectly sound doctrine that a European can acquire a domicile in Egypt, which would have appeared impossible if the dicta of the Privy Council in *Abd-ul-Messih v. Farra* <sup>4</sup> had been sound. It is much more often possible to assert with conviction that a decision of the Privy Council contains unsound matter than to claim this of a decision of the House of Lords. A clear case is the misapprehension of the term 'veto' in the judgement *In re Initiative and Referendum Act* <sup>5</sup> of Manitoba; the decision in *Cotton v. R.* <sup>6</sup> in part turned on a clear misstatement of the law of Quebec; the famous ruling on *Bonanza Creek Gold Mining Co. v. The King* <sup>7</sup> seems to have rested on the quite false belief that Lieutenant-Governors of Canadian provinces possessed a general delegation of the prerogative right to issue charters conferring on corporate bodies the capacity of natural persons, a view for which there is absolutely no evidence, the fact being that, when it was proposed to issue such charters, special authority was conveyed to the Lieutenant-Governors. The two decisions of the Privy Council as regards the rights of minorities in Manitoba regarding education <sup>8</sup> may be reconciled, but not very easily, and it is difficult to resist the view, widely held in Canada,<sup>9</sup> that one or other was badly handled. The decision *In re Southern Rhodesia* <sup>10</sup> which saddled the Crown with an obligation to repay administrative deficits to the British South Africa Company is extremely difficult to follow, and its denial of any rights to the natives is disquieting; indeed, the decisions <sup>11</sup> of the Privy Council in extending the claim to deny natives any rights against the Crown are of very doubtful soundness and suggest an excessive

<sup>1</sup> [1918] A. C. 777.<sup>2</sup> [1906] A. C. 559.<sup>3</sup> [1919] A. C. 145.<sup>4</sup> 13 App. Cas. 341.<sup>5</sup> [1919] A. C. 935.<sup>6</sup> [1914] A. C. 176.<sup>7</sup> [1916] 1 A. C. 566.<sup>8</sup> See above, p. 538.<sup>9</sup> Skelton, *Sir Wilfrid Laurier*, i. 452 f., 459.<sup>10</sup> [1919] A. C. 211.<sup>11</sup> *Sobhuza II v. Miller* (1926), 42 T. L. R. 446.

(ii) The provisions of the Code as to review apply even to *ex parte* orders. *Rash Behari v. Hemanta*, 88 I. C. 921=41 C. L. J 349; and to proceedings under the Indian Succession Act in granting letters of administration, *Kyone Home v. Kyon Some*, 3 Rang. 261=91 I. C. 509=1925 Rang. 314.

(iii) Applications invoking the inherent powers of court under s. 151 of the Civil Procedure Code are not classed as Review applications, *Probas Kumar Ganguli v. Nithar Lal Ganguli*, 192 Cal. 1054. See also *Peary Chowdhury v. Sanoo Das*, 27 I. C. 628=19 C. W. N. 419 where the court has set aside a compromise decree as vitiated by a fraud on court.

**Applicability of the Articles to cases under Sch. II.**—Schedule I of the Act is headed “*ad valorem* Fees” and Articles 1 and 5 occurring in the said Schedule have been held applicable only to cases where an *ad valorem* fee is leviable on the plaint or memorandum of appeal and not to cases where a fixed fee is leviable under Schedule II. *De Souza v. Secretary of State*, (1892) Bom. Priv. Judgments 1353. But a contrary view is taken by the Calcutt High Court. *Altap Ali v. Jamsur Ali*, 30 C. W. N. 334=1926 Cal. 638=93 I. C. 909. There the question arose out of an application for review of a decision dismissing a second appeal under O. 41, r. 11 of the Civil Procedure Code. The suit out of which the appeal arose was one for partition and the plaint and the memorandum of appeal bore a court-fee stamp of Rs. 15 as required by Article 17 (vi) of Schedule II of the Court-Fees Act as amended by the Bengal Act of 1922. It was contended that s. 4 of the Act directed the payment of fees as indicated by the 1st or 2nd Schedule of the Act and as the fee payable in the plaint in that case was under the second schedule which related to “fixed fees” the first schedule which referred to “*ad valorem* fees” could not be looked into for the purpose of levying fee on an application as in the present case. It was also contended that the headings of the two schedules form parts of the enactment as they refer to two distinct classes of documents and in order to fix what fee should be payable on this application one must be confined to the second schedule and that being so, the only provision applicable to this document is Article 1 (d) (ii) of the second schedule which requires a fee of Rs. 2. Regarding these contentions, the Lordships observed thus “In order to determine what amount of fee is payable in respect of the document one must find whether any of its kind is specified in either the first or the second schedule of the Act. Such a document is clearly specified in Article 4, Schedule I of the Act. *Prima facie* then the court-fee payable is under the first Article. There is no doubt that schedules annexed to an Act as part of the heading under which they are placed are parts of the enactment. But the same general rule which regulates the effect of the preamble applies also to these headings—namely that they are not to be taken into consideration, if the language of the enactment clearly shows otherwise.” *Crown on Statute Law—Third Edition*. page 188. T

private law and agency to governmental affairs with manifestly unjust results. More important and very valuable was the decision of the Council in 1924<sup>1</sup> on reference as to the position of the Imperial Government under the Treaty of 1921 with the Irish Free State, in view of the refusal of Northern Ireland to appoint an arbitrator under the agreement for the delimitation of the Irish boundary.

Occasions in which reference has been refused are not rare. Mr. Higinbotham's proposal that the Council should adjudicate on the dispute between the judges and the Ministry as to correspondence in 1865 was referred merely to the law officers, and not even their agreement with his views mitigated the indignation of Mr. Higinbotham at the outrage.<sup>2</sup> In 1872<sup>3</sup> the Council itself refused to consider the question of the New Brunswick educational legislation, which was impugned as contrary to the intention of the *British North America Act*. The President pointed out that the issue might come up on appeal, and, therefore, should not be dealt with on reference, and he also pointed out that the provincial Government had not assented to the reference. In 1878<sup>4</sup> the Imperial Government refused the request of Quebec for the reference to the Council of the question of the right of the Governor-General to remove a Lieutenant-Governor, because, there being no agreement on the part of Canada to the reference, the decision would not be binding, and, therefore, ought not to be given. In 1885<sup>5</sup> the Canadian Government negatived the proposal of the Imperial Government to refer to the Council the dispute between the Dominion and British Columbia as to the carrying out of the terms of union.<sup>6</sup>

<sup>1</sup> *Parl. Pap.*, Cmd. 2214; see also Cmd. 2155, 2166, 2264; 14 & 15 Geo. V, c. 41.

<sup>2</sup> See *Victoria Parl. Pap.*, 1864-5, B. 34, C. 2; 1866, Sess. 2, C. 8.

<sup>3</sup> Cf. *Parl. Pap.*, C. 2445, p. 121. The Government of Queensland in 1921 protested on this ground against a reference to the Council as to the validity of the Bill to abolish the Legislative Council.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Canada Sess. Pap.*, 1885, No. 34.

<sup>6</sup> For other cases of reference, cf. *In re Wallace* (1886), L. R. 1 P. C. 283; *In re Pollard* (1867), L. R. 2 P. C. 106; *MacDermott v. Judges of British Guiana*, *ibid.*, 341; *In re Ramsay*, 3 P. C. 427; *Emerson v. Judges of Supreme Court of Newfoundland*, 8 Moo. P. C. 157; *Smith v. Justices of Sierra Leone*, 7 Moo. P. C. 174 (cases of relations of attorneys and justices); *A.-G. of Queensland v. Gibbon* (1887), 12 App. Cas. 442 (vacation of seat in Legislative Council, Queensland; see 31 Vict. No. 38, s. 24); *Cloete v. Reg.*, 8 Moo. P. C. 484

2. As the proper fee to be levied on the plaint or memorandum of appeal at the time of presentation thereof,

3. As the fee which would have been properly levied on the plaint or memorandum of appeal if they had been put in at the time of the presentation of the application for review, and

4. As the proper fee to be levied if the applicant for review were then putting in a plaint or memorandum of appeal for the same relief.

As to (1), it seems clear that it is not the proper construction of the phrase. In the case of a suit or appeal in *forma pauperis*, no fee is actually levied on admission. Again the court of appeal may in certain circumstances increase or decrease the fee actually paid and it is clearly more reasonable to suppose that the legislature meant the fee which was the proper fee to be levied and not the fee actually levied.

As to (2), an adherence to the construction would mean that even though the review application only relates to a small portion of the relief asked for in the plaint or memorandum of appeal the applicant for review would have to pay the full stamp paid in the plaint or memorandum of appeal. This again seems to me hardly acceptable. This view, however, has found favour in the Calcutta High Court. *Nandilal Agrani v. Jogendra Chandra Dutta*, (1923) 28 C.W.N. 403, which refuses to follow an earlier decision of this Court, 7 Madras High Court Reports, Appendix I, to which I shall allude later on. Such a construction would in this court at least make an application for review much more expensive than an appeal.

As to (3), it would imply that where an applicant for review is the defendant and the appeals have been by the plaintiff all through, and the review application is thus the first motion of his for any relief, his application would have to be valued not on any sums paid by himself for the relief sought for by him but on the stamp paid by the opposite party for the relief sought for by it which may obviously have no sort of relation to the relief which the review application wants. This again hardly seems a reasonable construction of the phrase.

Construction No. (4) implies the applicant pays not for the relief sought for by any one else over which he has no control but on the relief sought by himself and he thus pays naturally and equitably on that relief as if it was a plaint or memorandum of appeal by himself for the relief. This appears to be the most reasonable interpretation of the phrase and it is the interpretation put upon the phrase by the court so long ago as 1872 (see 7 Madras High Court Reports, Rulings, Appendix, page 1) and this interpretation has been practically followed ever since by this court. The Bombay High Court has taken a similar view in *In re Manohar G. Tambekar*, 4 Bom. 26. It follows therefore that the court-fee will be the court-fee payable as if on the date when the review application was put in, the applicant was filing a plaint or memorandum of appeal for the same relief, i.e., in the present case the court-fee leviable will be the court-fee which has to be levied under the amended Court-Fees

tribunal, e. g. the propriety of the deportation of British subjects from the Union in 1914 without due process of law, or the confiscatory legislation of Queensland in 1920. The suggestion then formally made to the Colonial Secretary was not given effect to, though it is understood that Lord Milner did not negative the possibility of such a development of the functions of the Council, which, of course, could easily be constituted in such a manner as to secure real impartiality.<sup>1</sup> It was an object of special care to secure that the tribunal which dealt with the Irish boundary issue contained an Australian and a Canadian judge, thus giving the decision a truly Imperial aspect.<sup>2</sup>

<sup>1</sup> Keith, *War Government of the Dominions*, p. 261. Disputes as to Dominion trustee stocks could thus be adjusted, for the power of disallowance is obsolescent (cf. p. 770, n. 1).

<sup>2</sup> The Act of 1915 (c. 92) permits the Committee to sit in more than one division at a time, a useful preparation for a possible merger.

**Oudh.**—See *Nagehar Sahai v. Shian Bahadur*, 1924 Oudh 108.

**Patna.**—See *Sheikh Abdul Ganni v. Sito Singh*, 1925 Pat. 368—66 I. C. 143.

**Review of part.**—Where an application is made for the review only of a portion of a claim or decree, the question arises as to what is the proper fee. Should the applicant pay the whole or a moiety as the case may be of the fee paid on the plaint or memorandum of appeal or would it suffice if he treats the part of the claim sought to be reviewed as a separate entity and pay the whole or a moiety of the court-fee payable on that portion if that constituted a separate claim by itself. On the point, there is a divergence of views among the several High Courts. The Madras, Bombay and Rangoon High Courts take a liberal view and hold that it is sufficient if the fee is computed on the fractional claim sought to be reviewed while the other courts, viz., Allahabad, Calcutta, Oudh, Punjab and Nagpur hold *contra*.

**Madras.**—The earliest case is that reported in 7 M. H. C. R. (1872) Appendix page 1, where it was held that it was sufficient to calculate the fee referable to that portion of the claim covered by the decree sought to be reviewed. This was followed in *Punya Nahako v. King Emperor*, 50 M. 488=52 M. L. J. 128=25 L. W. 203=1927 Mad. 360 where Odgers, J., observed that there was no valid reason why the decision in 7 M. H. C. R., which has stood since 1872 should be dissented from. His Lordship further observed that the interpretation put upon Arts. 4 and 5 in Calcutta in *Nandilal Agrani v. Jogendra Chandra Dutta*, 28 C. W. N. 403, worked an obvious injustice and preferred the view of the Bombay High Court in *In re Manohar Tambekar*, 4 B. 26, Wallace, J., has exhaustively dealt with all the aspects of the question in his judgment quoted above *in extenso* in another connection regarding the effect of the amendment of the Act between the date of the decree and the application for review. His Lordship's judgment contains also observations regarding the question as to the fee payable where the review relates to a part of a decree. It is observed in page 492 of the report that the court-fee leviable will be the court-fee payable as if on the date when the review application was put in, the applicant was filing a plaint or memorandum of appeal for the same relief.

**Bombay.**—The view of the Bombay High Court is the same as that of the Madras High Court. See *In re Manohar Tambekar*, 4 B. 26, where it was held that when a plaint or memorandum of appeal comprises a number of claims and a portion of such claims has been allowed by the judgment the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the court to review its judgment. It was observed that in case of doubt a fiscal regulation should be construed in favour of the subject and that the construction put by the Bombay High Court on Art. 5

The position under these and the earlier similar instruments was vague. In 1869 Lord Belmore raised the matter in New South Wales. It appeared that it had been the custom for the Governor to deal with all ordinary cases personally without using the Council. On 4 October 1869<sup>1</sup> the Colonial Secretary ruled that the Governor had the right to use his own judgement, but that the views of ministers were of great weight, unless some Imperial interest were involved, as in a case of treason, or slave trading, or of some foreigner being involved. The same doctrine appeared in a circular of 1 November 1871,<sup>2</sup> and in a dispatch of 17 February 1873 to the Governor of New South Wales, where Sir A. Stephen had questioned the practice.<sup>3</sup>

On 30 May 1874, Mr. H. Parkes returned to the subject in an able minute in which he made clear his position. He preferred that in the existing condition of Colonial society the Governor should bear the whole responsibility, but if that were not to be the case, then the usual rule must follow; if the Governor did not accept advice, he must find other advisers. On 29 June the Governor forwarded the paper to the Secretary of State, and adopted definitely the attitude that the matter must be made ministerial: 'In the present constitutional state it is obvious that as regards all purely local matters ministers must be trusted "all in all, or not at all".' All cases, therefore, would, by agreement with the Ministry and the approval of Parliament, be submitted with advice, when the Governor would decide if any Imperial interest were involved. Resignation on refusal of advice was a possibility, but in fact Ministers did not necessarily resign whenever their advice on some minor matter was rejected. New Zealand and Victoria had the system he was adopting; in Queensland, South Australia, and Tasmania the matter actually came before the Council on the motion of the Minister. Mr. Parkes's objection to ministerial responsibility he rejected, because Parliament would never approve it, and already accusations of sectarian prejudice and official corruption had been levelled at himself. The Secretary of State, however, did not agree with the Governor save in a general way.<sup>4</sup>

<sup>1</sup> *Ibid.*, p. 1.

<sup>2</sup> *Ibid.*, p. 3. Cf. Parkes, *Fifty Years of Australian History*, i. 329-46.

<sup>3</sup> *Ibid.*, p. 7. Cf. *Hansard*, ser. 3, cccxiii. 1065-75.

<sup>4</sup> *Parl. Pap.*, C. 1202, p. 47. So again in May, 1875; C. 1248, pp. 6, 7:

plaint or memorandum of appeal, whether the review affects the whole or a part of the decree. See *Nabin Chandra v. Mohamad Uzir*, 3 C. W. N. 292; *Imdad Husan v. Badri Prasad*, (1898) A.W.N. 212; *In re Mirghul Ahmad*, 31 A. 224; *Hussaina v. Sahib*, 1913 P. L. R. 254. But the decisions in 7 M.H.C.R. Appendix 1 and *In re Monahar Tambelkar*, 4 B. 26 point to the opposite conclusion. The policy of the legislature is obvious. The substance of the matter is that for the purpose of ascertainment of the court-fee payable on the application for review the application relates back to the plaint or memorandum of appeal, as the case may be; the amount to be levied is a fixed proportion independent of the scope of the application for review. To put the matter differently, as soon as a suit has been instituted the amount or court fee payable on a possible application for review of the prospective judgment in the suit becomes fixed".

Court-fee is leviable on the plaint which was actually filed and has resulted in the judgment sought to be reviewed even though the application related to only a small portion of the relief asked for in the plaint. *Satya Kripal Benerji v. Satyabikash Banerji*, 57 C. 679=1930 Cal. 631.

In *Nobin Chandra Chakrabarthy v. Muhamad Uzir Ali Sircar*, 3 C. W. N. 292, the review was only in respect of costs and it was held that the court-fee that was payable for the whole claim ought to be paid.

**Oudh.**—In *Nageshar Sahai v. Shian Bahadur and others*, 1924 Oudh 108, the question of the fee payable in applications where they are for reviewing part of the decree was considered. "It was argued on behalf of the applicant that had it been intended that one half of the full fee paid on the memorandum of appeal should be payable on such an application for review the word used would have been "levied" and not "leviable" and it was argued that the words "plaint" or "memorandum of appeal" should be construed as if they meant plaint or memorandum of appeal asking for the same relief as that asked for in the application for review. This question has been before all the High Courts in India, and while the courts in Bombay and Madras, incline to the view put forward by the applicant, the Allahabad, Calcutta and Lahore Courts have taken a contrary view and have held that the words "plaint or memorandum of appeal" mean the plaint or memorandum of appeal in which the judgment the review of which is asked for was passed (4 Bom. 26, 7 M. H. C. R. App. 1; 31 A. 294 and 3 C. W. N. 291) \* \* \* Had the legislature intended that an *ad valorem* fee should be levied only on the value of the subject-matter in respect of which relief is sought for by the application for review, we think it would have said so in clear and definite terms. The change in the law (from a fixed to an *ad valorem* fee) was no doubt made to prevent frivolous applications for review and though in some cases, the court-fee leviable may be disproportionate to the relief asked for, yet if the application



Wales was sent to Canada, and elicited a discussion by Mr. Blake, who with his usual accuracy placed the whole matter in the most effective light.<sup>1</sup> He interpreted the documents correctly as an effort to insist on a personal responsibility of the Governor which ran counter to principle. There was, he contended, no ground on which the responsibility of decision should not be placed on ministers in respect of this, as of every other act of government. The arguments from undue pressure on ministers and the danger of their yielding improperly to such pressure were dismissed as inapplicable to Dominion conditions, where the Ministry was already held responsible for the prerogative by public opinion ; difficulties might arise as in all matters of government, but they would best be solved by unflinching application of constitutional principles. He readily admitted that there might be cases where the Governor-General had to consider Imperial issues, e. g. the proposal to banish a convict, the treatment of a foreigner, political offenders or offenders tried under Imperial Acts, but these were cases on a parallel with other instances in which, as Canada admitted, Canada might not be deemed to possess full self-government, and they must be left apart. The Secretary of State was, however, unwilling to omit as desired all reference to the special character of pardons, but he agreed to put nothing in the letters patent, and to have in the instructions only the grant of the power to pardon ; the provision that banishment should not be imposed as a condition of a pardon ; and the requirement that the Governor-General should receive in capital cases the advice of the Privy Council, in other cases that of a minister, and that, where the matter directly affected the interests of the Empire or of any country or place beyond Dominion jurisdiction, he should take these interests specially into his own personal consideration together with the advice tendered to him.

In matters where no Imperial interest is concerned the Governor-General's intervention is thus compelled merely when the Council is, as in Shortis's case,<sup>2</sup> equally divided.

<sup>1</sup> *Canada Sess. Pap.*, 1876, No. 116 ; 1877, No. 13 ; 1879, No. 81.

<sup>2</sup> *Commons Deb.*, 1896, Sess. 1, pp. 827 ff., 7171 ff. ; Sess. 2, p. 2279 ; 32 *Can. L. J.* 237. For the usual practice, see *Commons Deb.*, 1908, pp. 2915 ff.

to suits by paupers, in so far as those provisions are applicable. This, I think, attracts the provisions of that portion of O. 33, r. 8 which I have referred to and on the authority of the case quoted would enable a pauper appellant to file a review application against an appellate decree. *There is however in this case the peculiarity that the appellant was not a pauper and only seeks now to be declared qualified as such.* It has been held in a number of cases, *Thomson v. Calcutta Tramway Co.*, 20 Cal. 319, which is in turn based on *Rivji Patel v. Sakharani*, 8 Bom. 615, and *Nirmal Chandra Mukherji v. Doyal Nath Battacharya*, 2 C. 130, that a person who institutes a suit in the ordinary way may be declared a pauper during the course of it. I have been referred to the Privy Council judgment in *Sobiri Thukaram v. Savi and another*, 40 M. L. J. 308, for the view that the same proposition applies to appeals but I can find no words in that judgment in support of that contention. I am however assured that it is the practice of this court to enable an appellant to qualify as a pauper subsequent to the institution of the appeal and it seems to me that the analogy of the decision with regard to a suit will hold in this respect. Pushing that principle a little further, an appellant who has conducted his appeal otherwise than as a pauper should be allowed to plead pauperism in a proceeding connected with the appeal, that is to say, in a review application. I think on these principles that an application to file a review application in *forma pauperis*, will lie."

### Article 6.

<p>Copy or translation of a judgment or order not being or having the force of a decree.</p>	<p>When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office, or by any other Judicial or Executive Authority—</p> <p>(a) If the amount or value of the subject-matter is fifty or less than fifty rupees.</p> <p>(b) If such amount or value exceeds fifty rupees.</p> <p>When such judgment or order is passed by a High Court.</p>	<p>Four annas, (Six as. in Bengal, Bihar and Orissa, Central Provinces, Madras and United Provinces.)</p> <p>Eight annas, (Twelve as. in Bengal, Bihar and Orissa, Central Provinces, Madras and United Provinces.)</p> <p>One Rupee. (One rupee and eight as. in Bengal, Bihar and Orissa, Madras and United Provinces.)</p>
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### COMMENTARY.

**Local amendments.**—This Article is amended in Bengal, Bihar and Orissa, Central Provinces, Madras and United Provinces, and the fee has been enhanced as noted in the third column.

by Lord Knutsford and Sir A. Musgrave alike, for the case which arose was not under the prerogative but under the *Probation of Offenders Act*, 1886, and no real question of the Governor's discretion arose under this statutory power. This defeat of the Governor was followed up in New Zealand.<sup>1</sup> Lord Onslow reported on 7 February 1891 that his Ministers held, in connexion with the pardon of a Maori, Mahi Kai, whose sentence for murder was commuted to life imprisonment, that their advice should be formally tendered and formally acted on under the ordinary rule of constitutional government. Lord Onslow held that the time had come when the rule should be adopted; the social conditions referred to by Mr. Parkes in 1874 had passed away in New Zealand; ministers were now able to take responsibility; as it was, deputations waited on the Governor; he was accused of being biased by religious or class prejudice, and counsel for the prisoner tried to turn him into a Court of Appeal from the judiciary. The old convention as to ministers allowing the Governor to act independently had broken down in Queensland and now in New Zealand—South Australia in the same year denounced it, the Government threatening to resign—and it would be sufficient in every case to adopt the rule of action on ministerial advice, unless the Governor were willing to change his ministers, subject, of course, to the reservation of cases affecting the Empire or foreign countries. The Secretary of State consulted the Colonies in Australia, and, on their agreement with the new view, fresh documents were issued adopting the rules laid down for Canada, and requiring only personal consideration of matters affecting the Empire or foreign countries.

On the issue of the position of ministers, when the Governor refused to act as advised because of some Imperial interest, there was the usual confusion of thought. Mr. Ballance in his memorandum on the power of pardon insisted that in every case the Governor must find other ministers if he declined advice, thus negating the doctrine definitely laid down by Lord Carnarvon on 4 May 1875<sup>2</sup> that, if the Governor acted under Imperial instructions, ministers ought not to feel either obliged or entitled to retire, seeing that they were not responsible for

<sup>1</sup> *Parl. Pap.*, 1891, Sess. 2, A. 1, pp. 5, 6, 19, 20.

<sup>2</sup> *Parl. Pap.*, C. 1248, p. 7; *Canada Sess. Pap.*, 1876, No. 116, p. 82.

**COMMENTARY.**

**Local amendments.**—This Article has been amended in Bihar and Orissa, Central Provinces and United Provinces and the fee enhanced.

**This Article applies to decrees or orders having the force of a decree while the preceding Article applies to orders which have not the force of a decree.**

**Order having the force of a decree.**—Vide, orders under ss. 47, 144 etc., or an order rejecting a plaint under the Code of Civil Procedure. *See also* Commentaries under Sch. II, Art. 11.

**Application of the Article** —Where the decree or order relates to subject-matter which has got a money value, this Article applies and there is a graduated scale of fees, according to the valuation. But where the subject-matter is not capable of valuation, and a fixed fee is paid it appears that Art. 9 is the proper article to apply.

## Article 8.

<p>Copy of any document liable to stamp duty under the Indian Stamp Act, 1879, when left by any party to a suit or proceeding in place of the original withdrawn.</p>	<p>(a) When the stamp duty chargeable on the original does not exceed eight annas [one rupee in Bombay.]</p>	<p>The amount of the duty chargeable on the original. (One and a half times the amount of the duty chargeable on the original in Bihar and Orissa.)</p>
	<p>(b) In any other case.</p>	<p>Eight annas. (Twelve annas in Bihar and Orissa and United Provinces.)</p>
		<p>One rupee in Bombay.</p>

### COMMENTARY.

**Local amendments.**—This article has been amended in Bihar and Orissa, Bombay and United Provinces.

**Indian Stamp Act, 1879.**—See now the Indian Stamp Act of 1899 (II of 1899).

**Application.**—The Article applies only to the case of copies of such documents as are liable to stamp duty under the Indian Stamp Act 1899. Again the original must have been placed on the records of a suit and sought to be withdrawn by the substitution of the copy.

This is one of the group of four Articles 6 to 9 which provide for the levy of court-fee on copies. O. 13, r. 9, Civil Procedure

clemency to a murderer and to strike leaders excited bitter comment on the score that their action was dictated by pure expediency, as doubtless was the case, and in 1911 they sought to shelve responsibility by a Criminal Appeal Bill in which the judges were to consider all death sentences, the Executive to have no further responsibility. Queensland more sensibly determined to set the lead in Australia by abolishing a death penalty which was never carried out, and did so in 1922. Murders are not frequent but far from rare.<sup>1</sup>

No change was made in substance in the State letters patent and instructions on the advent of the Commonwealth; the Commonwealth in its turn was treated exactly as was Canada, the power to pardon and the conditions being expressed in the instructions and not the letters patent. The power is definitely restricted to offences against the laws of the Commonwealth, i. e. any Commonwealth common law or statutory law, as on defence, customs, quarantine, the post office, and so forth. If an action is a crime at common law in a State, or under the federal law, the power to pardon belongs constitutionally to the Governor-General or the Governor, according as the prosecution is federal or State, though in strict law a State Governor, who has power to pardon for any offence which may be tried within the State, might pardon even for an offence punished under Commonwealth law. He alone can pardon for offences tried under Imperial Acts. In Canada in 1905 the old wording<sup>2</sup> which allowed the Governor-General to pardon provincial offences, deliberately inserted at first by the Imperial Government, which refused to accept the desire of the Quebec Conference for the grant of the pardoning power in respect of provincial matters to the Lieutenant-Governors, was withdrawn. This should have been done much earlier, when it had been decided by the Supreme Court that the pardoning power could properly by Act be conferred on the heads of the provincial Executives. But, carelessly, the power to pardon in respect of offences under Imperial Acts was still omitted.

<sup>1</sup> The Victorian Supreme Court has held that a free pardon still leaves a man liable to be refused admission under a law to prevent the influx of criminals; *Ryall v. Kenealy*, 6 W. W. & A'B. (L.) 193, 206, 207.

<sup>2</sup> *Sess. Pap.*, 1869, No. 16. Before federation both the Governor-General and the Lieutenant-Governor of Upper Canada had delegation of the power.

clear that court-fee could not be collected on those certified copies under Art. 8, for Art. 8 is restricted to cases where the original document is liable to stamp duty under the Stamp Act. Here, the original account book not being so liable, the certified copy could not come within this Article. The only other Article under which it could be charged is Art. 9. This question was adverted to but not decided in the 11 Bombay case above referred to. Their Lordships observe as follows:—"Sch. I of the Court-Fees Act, Art. 8 shows that when a party to a suit withdraws an original document, any copy he leaves of that document is charged under it only if the original withdrawn is itself liable to stamp duty under the Stamp Act. Therefore, the copies left by the creditor are not chargeable with any court-fee under the Court-Fees Act, Sch. 1, Art. 8." Their Lordships have not pronounced an opinion about the applicability of Art. 9.

### Article 9.

Number.		Proper fee.
Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with executive administration of a division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas. [Twelve annas in Bihar and Orissa.]

### COEMENTARY.

**Provincial amendment.**—The fee has been raised in Bihar and Orissa.

**Application.**—This is a residuary Article supplementing Articles 6 and 7 and provides for cases not provided for by them. This Article should be applied where there is no other specific provision in the Act.

**Judicial Proceeding.**—The expression 'Judicial' is used as contrasted with 'revenue'. There is no definition of the word 'proceeding' either in this Act or in the General Clauses Act. This has created a deal of confusion in understanding the exact scope of the several provisions of this Act where the word 'proceeding' is used. This word has been defined in the Civil Rules of Practice in Madras as including all documents presented to or filed in court by any party or

In the case of Southern Rhodesia the form adopted is that of the Union, with the suitable qualification of a political offence as one unaccompanied by other grave crime.

§ 6. *The Prerogative in Newfoundland and Malta and Ireland*

In Newfoundland the old instruments remain unchanged. The letters patent give an absolutely general power, with an equally general prohibition of making a pardon conditional on banishment, even in the case of political offences or aliens. The instructions merely provide for the personal discretion of the Governor in the case of death sentences.<sup>1</sup> It was left, therefore, for constitutional practice to decide how the prerogative should be exercised, and up to the Governorship of Sir William Macgregor the matter was left in the hands of the Governor. He, however, induced ministers to accept responsibility, after a violent attack had been made on him for remitting a fine in respect of a technical breach of the game laws of the Colony. Doubtless, however, in a place like Newfoundland, ministers may be anxious to obtain the advice of the Governor in cases of difficulty. Formerly, of course, the treaty rights of American citizens and French subjects rendered it always possible that the Governor might have to exercise the prerogative on Imperial grounds, but the recent regulation of these rights diminished this necessity.

In the case of Malta the form adopted is that of Southern Rhodesia, banishment being permitted in the case of aliens generally, but only in respect of a political offence unaccompanied by other grave crime in the case of a natural-born or naturalized British subject.

In the case of Northern Ireland the system of the United Kingdom is adopted, under which the Minister is responsible for all decisions, and in the Irish Free State similarly the Governor-General is eliminated, though it may be ruled that if he desired he could exercise the same power as the Governor-General of the Dominion in view of the Treaty of 1921. In fact, it is obvious that no Court could hold invalid any pardon granted by him in the King's name.

In every case it must be remembered that the King has the right to pardon on the advice of Imperial ministers, but this

<sup>1</sup> Cf. *Cape Assembly Deb.*, 1907, pp. 100-2.

administration, must if filed later on by parties in support of their petitions and applications are to be treated as 'copies' within the meaning of this Article. *Proceedings of Madras Board of Revenue No. 342 dated 7-11-1898*. Standing O. No. 124. Board of Revenue Madras Stamp Manual, 4th edn., page 342.

**Search fees.**—There is no provision of law and there is nothing in the Civil Rules of Practice (Madras) or any rule that govern the procedure of a Civil Court authorising the levy of search fees for supplying copies to litigants. When an application is made all that is required by a party is to supply stamps for copies and if the required number of copy stamps are supplied, it is the court's duty to furnish copies asked for, *Raja Saheb v. Sub-Collector*, 51 M. 599—1925 Mad. 370.

**Copies filed by a party in appeals or civil revision petitions in prior to decree cases in Madras.**—In all civil miscellaneous appeals or second appeals or civil revision petitions, filed against interlocutory orders in what are known as 'prior to decree cases' the question arises whether the copies of documents filed by the party ought to be stamped with the necessary court-fee. According to the procedure followed previously, as soon as such an appeal or civil revision petition was admitted the entire records were called up from the lower courts, so that there was practically a stay of proceedings though there was no such stay by the appellate court. To prevent this evil O. 43, r. 2, C. P. C. was re-enacted in Madras and it is provided therein that in the case of appeals from interlocutory orders made prior to decree, the court which passed the order appealed from, shall not send the records of the case unless an order has been made for stay of further proceedings in that court. As a consequence of this, the Appellate Side Rules of the Madras High Court require the party to file certified copies of documents in such appeals or civil revision petitions in prior to decree cases. Under the Court-Fees Act s. 4, court-fee has to be paid on those documents. It is a real hardship as these certified copies are required to be furnished only as an expedient measure to prevent an automatic stay of proceedings in lower courts. Normally if the records have been called for from lower courts there would have arisen no necessity for parties to file certified copies and pay court-fee thereon. Therefore it is hardly fair to require them to pay court-fees on these certified copies. But the Act leaving no discretion in the matter, courts have to collect the fee. It is for consideration whether the Government should not remit the court-fee payable on such copies under the powers vested in it under s. 35 of the Act.



The Privy Council<sup>1</sup> has definitely ruled that the power to pardon extends to pardoning contempts of Court resulting in the committal of an offender to prison, a matter of importance, for it has been stated in the United Kingdom<sup>2</sup> that pardon is not available in the case of contempt of Irish Land Courts. This doctrine seems, however, to have been mainly due to the convenience of exonerating thus the Government from responsibility, and it would be interesting to see the validity of a royal pardon denied by any Court on such a ground. Unfortunately, Governments in these matters prefer to adhere to shirking responsibility.

Since 1878, on a suggestion of Mr. Blake's, power has been given to pardon offences triable, though not committed, in a Colony. This power was carelessly omitted from the Canadian instructions of 1905, through a literal following of the Commonwealth instructions of 1900 in forgetfulness that the two Constitutions differ vitally, and a similar blind following of the blind<sup>3</sup> resulted in denying the power to the Governor-General of the Union in 1910. When Imperial forces are within a Colony, it is not the practice of the Governor to exercise in respect of them the royal prerogative, though in law he could clearly do so.<sup>4</sup>

<sup>1</sup> In a Bahamas case, [1893] A. C. 138.

<sup>2</sup> *Hansard*, ser. 4, cxciii. 102.

<sup>3</sup> This neatly illustrates the numbing force of precedent on legal advisers. So the Queensland letters patent of 1925 (s. 9) assume the existence of the Legislative Council abolished in 1922, and the Cyprus letters patent (s. 9) try to override the *Colonial Laws Validity Act*, 1865.

<sup>4</sup> For his statutory powers, see *Army Act*, s. 54 (7) and (9).

**Bengal.**—For the entries above the proviso in the second column, and for the entries in the third column, the following is substituted by Beng. Act IV of 1922 namely :—

when the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees	Two per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees	Three per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees	Four per centum.
and	
when such amount or value exceeds a lakh of rupees on the portion of such amount or value which is in excess of one lakh of rupees [ <i>then added by Act XI of 1935</i> ] up to two lakhs and fifty thousand rupees,	Five per centum.
and	
when such amount or value exceeds two lakhs and fifty thousand rupees, on the portion of such amount or value which is in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees,	Five and a half per centum.
and	
when such amount or value exceeds three lakhs of rupees, on the portion of such amount or value which is in excess of three lakhs of rupees up to four lakhs of rupees,	Six per centum.
and	
when such amount or value exceeds four lakhs of rupees, on the portion of such amount or value which is in excess of four lakhs of rupees up to five lakhs of rupees,	Six and a half per centum.
and	
when such amount or value exceeds five lakhs of rupees, on the portion of such amount or value which is in excess of five lakhs of rupees :	Seven per centum.

**Bihar and Orissa.**—For the entries above the proviso in the second column and for the entries in the third column, the following is substituted by Act I of 1922, namely :—

when the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees	Two per centum.
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PART VII

THE CHURCH IN THE DOMINIONS

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11. Probate of a will or letters of administration with or without will annexed.—*Contd.*

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs of rupees, on the part of the amount or value in excess of two lakhs of rupees, up to two lakhs and fifty thousand rupees.

Five per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two lakhs and fifty thousand rupees, on the part of the amount or value in excess of two lakhs and fifty thousand rupees up to three lakhs of rupees.

Five and a half per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds three lakhs of rupees, on the part of the amount or value in excess of three lakhs of rupees up to four lakhs of rupees.

Six per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds four lakhs of rupees, on the part of the amount or value in excess of four lakhs of rupees, up to five lakhs of rupees.

Six and a half per centum.

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds five lakhs of rupees, on the part of the amount or value in excess of five lakhs of rupees :

Seven per centum.

Provided that when after the grant of a certificate under Part X of the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

## THE CHURCH IN THE DOMINIONS

### § 1. *The Legal Position of the Church of England*

IN England the Church of England still remains in vital connexion with the State, a fact symbolized by the presence of the Bishops in the House of Lords, the apparatus of Ecclesiastical Courts from which an appeal lies to the Privy Council, State establishment, and, since 1919, the extraordinary power of legislation for its own affairs with the formal approval of Parliament possessed by the Church. In the Dominions the Church has gradually come to be dissociated wholly from the State, and the only two Churches which may be said to be in a sense established are the Roman Catholic Church in Quebec,<sup>1</sup> where it is permitted to exact by the civil authority its dues from all its followers, and the same Church in Malta, in which by the first Act passed after the grant of responsible government it was enacted that the 'Roman Catholic Apostolic religion is, as it has ever been in the past, the religion of Malta and its dependencies'.

The historical process by which this result has been achieved is interesting. It was manifestly difficult to hold that the English ecclesiastical law was carried into the Colonies, and, when in 1787 the first bishopric was set up in Nova Scotia, the jurisdiction conferred on the Bishop was not expressed to extend to any non-ecclesiastics, but it did empower him to visit, punish and correct, whether by removal, deprivation, suspension, or other ecclesiastical censure, all ecclesiastical persons in his diocese, and to inquire into their conduct by sworn witnesses. Another commission gave him like power in Quebec, New Brunswick, and Newfoundland; this bishopric was recognized in the Imperial Act of 1791 establishing representative government in the Canadas. In 1793 a bishopric of Quebec was founded and the Canadas removed from the juris-

<sup>1</sup> The Pope, of course, really governs the Church; cf. his marriage laws, *Canadian Annual Review*, 1908, p. 629. The right to appoint bishops doubtless once belonged to the Crown (Forsyth, *Cases and Opinions*, pp. 49-51), but the idea of using it dropped, and an alliance between State and Church substituted. See, e. g., Skelton, *Sir Wilfrid Laurier*, i. 82 ff., 120 ff.

**United Provinces.**—For the entries above the proviso in the second and third columns, the following is substituted by Act III of 1932, namely :

1. When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees ; and	Two per centum on such amount or value.
2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ; and	Two and one-half per centum on such amount or value.
3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ; and	Three per centum on such amount or value.
4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees .	Four per centum on such amount or value.

**The taxable minimum.**—This Article has to be read with s. 19 (viii) *supra* which exempts estates of the value below Rs. 1,000. But this has been amended in Bengal, and Bihar and Orissa, and the minimum raised to Rs. 2,000 so that all estates of the net value up to Rs. 2,000 are exempt from the fee in those Provinces.

**Application for the grant of probate.**—The fee liviable on such an application for the grant of probate or letters of administration is provided for in Art. 1, Sch. II and the fee for the grant of such applications is provided for in this Article.

**Probate of a will.**—A 'Will' is defined in s. 2 (b) of the Indian Succession Act (Act XXXIX of 1925) as meaning the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.

**Probate.**—Is defined in s. 2 (f) of the same Act as meaning the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator.

**Grant of probate or letters of administration.**—As to whom probate shall be granted see s. 222 of the Indian Succession Act (Act XXXIX of 1925) and generally Part IX of the said Act.

Crown to create such jurisdictions overseas, for that repeal had been expressly preserved by 13 Car. II, c. 12, which otherwise restored ecclesiastical jurisdiction. Nor could it be held that ecclesiastical law, unless specially introduced, was in force in a settled colony, so that, even if letters patent gave the bishop metropolitan rank, they could give no jurisdiction by reason of that rank. Spiritual authority might be inherent in the rank of metropolitan, but it could be transformed into civil power only by Imperial or local legislation. Further, it was impossible to find any basis of contract in the case, there being no actual agreement binding the prelates in question, whose relations were imposed solely by the supposed royal power. The judgement, it must be confessed, erred in fact; it treated Natal as having representative government, so that the Crown had no legislative authority left. In point of fact Natal was a Crown Colony, and without power to change its Constitution, so that, if the Crown had had no power to legislate, there could have been no change, while in point of fact the Crown did legislate in 1856 by bestowing a representative Constitution. It is, however, possible that, even if it had remembered this, the Council would have relied on the fact that the Bishop of Capetown was not subject to the power of the Crown to legislate for Natal, and, therefore, it was not competent to create effectively the metropolitan relationship.

This case was followed by the judgement of Romilly M.R. in *Bishop of Natal v. Gladstone*<sup>1</sup> that, whatever else might be the case, the Bishop was entitled to be paid his salary. He attempted there to make quite clear the distinction between a Church in a colony which was a real branch of the Church of England, and a Church which might be in full communion, but was not really a branch. His criterion rested on change in the form of appointment of bishops or ecclesiastical tribunals, and he endeavoured to make out that the Privy Council had admitted the possession of jurisdiction. The matter, however, was much better dealt with by the Privy Council itself in *Merriman v. Williams*,<sup>2</sup> where it was quite clearly laid down that it could not be ruled that Englishmen in the Colonies had ceased to be members of the Church of England merely because they elected their bishop, or had a different system of ecclesiastical courts,

<sup>1</sup> L. R. 3 Eq. 1.    <sup>2</sup> (1882) 7 App. Cas. 484; Walker, *Lord de Villiers*, pp. 178 f.

**The Administrator-Generals Act.**—Under s. 31 of the Act, if the estate is worth less than Rs. 1,000, the certificate of the Administrator-General would be sufficient. *Narayan v. Pandurang*, 34 B. 506.

### Value of the property.

(1) *It is the value at date of application.*—The true value of the estate is its value at the date of the application for probate or Letters of Administration and not the value at the death of the testator. *Deputy Commissioner, Singhbum v. Jagdish Chandar*, 1921 Pat. 206.

(2) *It is payable only in respect of the property as to which probate is granted and not in respect of property which may be ultimately administered by the executor (ibid).*

(3) *It is the net and not the gross value that is to be considered.* In the goods of *Chin Ah Yaing*, 24 I. C. 823; In the goods of *Queningbrough*, 22 C. L. J. 160; In *Re Catherine Thaddeus*, 24 I. C. 193; The decision to the contrary in *Collector of Maldah v. Nirode Kumini Dass*, 17 C. W. N. 21 is no longer good law.

There was a conflict of views between the several High Courts as to whether it is the gross or the net value of the estate that is the determining factor. It was held in the decision *In the goods of Mrs. E. E. W. Meik*, 40 All. 279, that to hold that duty is payable on the gross value is inequitable. Apart from any question of hardship *Richard, C. J.*, observed as follows (p. 281 of the Report) "It remains to be considered whether upon the true construction of the Act notwithstanding any hardship that may arise, duty is nevertheless leviable upon the gross value of the estate. We think we are bound to read the Schedules together with the Act. \* \* On a true construction of the Act, no duty is payable where the value of the estate after making the deductions specified in Annexure B of the 3rd schedule is less than Rs. 1,000".

In the decision *In the goods of Harriet Teviot Kerr*, 18 C.L.J. 308, *Mookerjee, J.*, has discussed the question elaborately and has held that the value referred to is only the net and not the gross value. His Lordship observed as follows:—"Article 11 of Schedule I to the Court-Fees Act provides that on a probate of a will or letters of Administration with or without will annexed when the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees but does not exceed ten thousand rupees a fee of 2 per centum has to be paid on such amount or value. When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees, a fee of two and one-half per centum on such amount or value has to be paid; when such amount or value exceeds fifty thousand rupees a fee of three per centum on such amount or value has to be paid. On behalf of the Administrator-General it has been argued that the fee payable ought



Colenso, and left it for the Church itself in all the self-governing Colonies to obtain from the local Legislatures such legal aid as they deemed desirable. The English Church in South Africa constituted itself the Church of the Province of South Africa in full communion with the Church of England and other Anglican communities ; its Provincial Synod decisions bind all members of the Church in South Africa, but it is prepared to accept the authority of the General Synod of the Church of the Anglican Communion, when that meets, and the General Consistory of the Lambeth Conference as its court of final appeal. It has twelve dioceses, including that of Natal, a bishop of the Church having been consecrated by the Archbishop of Canterbury in 1893. Similarly, in 1866, New South Wales provided itself with a Constitution, followed by Queensland and Western Australia in 1868 and 1872. In the latter year a synod of the Australian dioceses was agreed upon and remodelled in 1896. Since 1905 there have been three archbishops, the primate being elected by the bishops. Sir G. Grey helped to draft a Constitution for the Church of New Zealand,<sup>1</sup> which is in all matters of government autonomous, as of course is the Church of England in Canada. In all these cases the civil rights of the members of the Church are enforced by the Courts on the usual basis of the observance of pacts among members of voluntary associations.<sup>2</sup>

The consecration of these bishops in these Churches is entirely a matter for the Church itself, but consecration if desired by an archbishop in England requires the sanction of the Crown,<sup>3</sup> which has power to authorize consecration of bishops for service overseas within or without the British dominions. In other cases the Colonial bishops consecrated in this manner are full members of the Church of England in every sense, and

<sup>1</sup> Cf. Collier, *Sir George Grey*, p. 88 ; Rusden, ii. 256 ; Bishop of Wellington, *Guardian*, 11 Aug. 1875 ; Phillimore, *Eccl. Law*, II, x, chap. 3.

<sup>2</sup> For the litigation in Natal see *Board of Curators of Church of England v. Durban Corp.* (1900), 21 N. L. R. 22 ; *Moses Sibisi v. Curators*, *ibid.*, 90 ; Dilke, *Problems of Greater Britain*, ii. 418 ff. Act No. 9 of 1910 ended property disputes between the Churches, but recognized their distinction.

<sup>3</sup> No diocese is assigned for Colonial bishops ; see Lord Kimberley's decision on the Bishop of Sydney's request in 1872 ; *New Zealand Parl. Pap.*, 1872 A, 1a, p. 31 ; *Hansard*, ser. 3, clxxxvii. 256, 762 ; *Parl. Pap.* H. C. 259 II, p. 50 ; Adderley, *Colonial Policy*, pp. 395 ff. The style Lord Bishop is irregular ; *Parl. Pap.*, C. 3184, p. 7. Right Rev. is official.

property not subject to duty, the difference between the gross value of the estate and the amount of debts, alone constitutes property subject to duty. But it has been urged on behalf of the Board of Revenue that Article 11 of the first Schedule militates against this view inasmuch as that Article requires the fee to be paid on the amount or value of the property in respect of which the grant of probate or letters is made, and it cannot be disputed that the grant of probate or letters is made in respect of the entire estate. The true mode of interpretation of a statute like the Court-Fees Act which has been repeatedly amended is not to consider individual sections but to take them as a whole and to give effect to the legislative intent upon a particular matter. It is conceivable that in 1899 when by s. 2 of Act XI of that year, s. 19-I was inserted in the Court-Fees Act as originally framed, the language of Article 11 of the first schedule was not carefully considered. Still it is the duty of the court to give effect as far as practicable, to all the sections of the statute as it stands in its amended form, and the court cannot rightly be invited to place such a construction upon the new sections introduced as would unquestionably destroy their effect. When the Legislature states explicitly in the third schedule which was inserted in 1899 that debts due and owing from the deceased are not subject to duty, that the petitioner is by law allowed to deduct the amount of debts from the gross valuation of the estate and that he is to state in Annexure A the net total value of the estate, the Court should not interpret Article 11 of the first schedule as an isolated provision. But the court should give effect to the combined provisions of Article 11 of the first schedule and the third schedule. From this point of view the fee should be calculated upon the net value of the estate obtained by the deduction of the amount of the debts from the gross value of the estate."

**Judgment debt due to estate—Valuation.**—It is open to the executor applying for probate to put upon a judgment debt forming part of the deceased's estate what he considers to be its fair value, having regard to the chances of recovery and pay duty on such value only. *In re Radhibai Rupji Sunderji*, 55 B. 844=1931 Bom. 419. The older decisions in *In re Ramchandra Ghose*, 24 Cal. 567 and *In the goods of E. L. Beake*, 13 Beng. L. R. 241 to the contrary do not seem to be correct.

**Provident Fund.**—Money standing to the credit of a deceased person in Railway Provident Fund deposit is personal property. It is an asset of the deceased and if such sum exceeds Rs. 2,000 it is liable to assessment. *In re Robinson*, 5 Luck. 712=1930 Oudh 145; but see contra *In re Digambar*, 1926 Nag. 306 and other cases cited below. Where a nominee of the Provident Fund of the deceased applies for letters of Administration to the estate of the deceased the amount of Provident Fund is not an asset liable to probate duty. *Secretary of State v. Mary Murray*, 1930 Cal. 252; *See Agnes v. James William*, 1925 Nag. 108; but see contra. *In*

received the most favourable consideration and was permitted to exact by law her dues from all Roman Catholics. Although the Crown had the legal right to appoint Roman Catholic bishops the power was never employed,<sup>1</sup> and more or less surreptitiously the Pope was permitted to exercise the full and complete control of his co-religionists in the Dominion. Education has been wholly controlled by the Church, and it has long distinguished itself by its excursions into politics, the priesthood enforcing a strict control over the people. In 1877<sup>2</sup> an election was declared void by the Supreme Court simply on the score of clerical influence, and that influence has been active in gradually removing from Quebec the settlements of Protestant farmers. In 1895-6 it was the fear of the clergy of Quebec which drove the Conservative Government to ruin in the effort to coerce Manitoba on the educational issue.<sup>3</sup> The priests worked hard to reward Sir C. Tupper by urging their parishioners to vote against Mr. Laurier, under threat of severe ecclesiastical censure. The defeat of their efforts did not endear him to them, though in 1896 he presented the humiliating spectacle of a Premier petitioning the Pope to approve his actions,<sup>4</sup> and in 1909-10 their objection to military service evinced itself in extreme hostility toward his naval projects, and their carrying against him elections in Drummond and Arthabaska. Great excitement prevailed in 1909, when the first Plenary Council was held there by command of the Pope, and in 1910 the Eucharistic Congress elicited great demonstrations, the Administrator, in the absence of the Governor-General at Hudson Bay, going out of his way to greet the Papal Legate, whose visit was honoured by the presence of soldiers in uniform, though the Government in the House of Commons was emphatic in repudiating any official character for the facts.<sup>5</sup> During the war the Church, unfortunately, was in the main antipathetic to any share in the dangers of the Empire. It must be remembered that France,

<sup>1</sup> Cf. *Parl. Pap.*, H. C. 94, 1838, pp. 71, 72.

<sup>2</sup> *Brassard v. Langevin*, 1 S. C. R. 145. See Skelton, *Sir Wilfrid Laurier*, i. 143 ff. Bishop Langevin actually pressed for the removal of Judge Casault from his Laval chair because he took part in the decision to annul an election at Bonaventure, where curés threatened to refuse the sacraments to Liberal voters. A mission of Mgr. Conroy in 1877 led to less immoderation of action.

<sup>3</sup> Skelton, i. 462 ff.

<sup>4</sup> *Ibid.*, ii. 37 f.

<sup>5</sup> Cf. *Canadian Annual Review*, 1907, pp. 408 f.; 1910, pp. 352, 358, 625.

contended by the executors on the authority of *Collector of Kaira v. Chuni Lal*, 29 B. 161, that the deceased testator had not beneficial interest in any part of the property devised and therefore that they are exempt from the payment of any duty. This contention was not upheld. Their Lordships went on to observe further as follows:

"The Court-Fees Act exempts from payment of duty any part of the estate of a deceased testator or person to whom letters of administration are sought or could be shown to have been held by him as bare trustee without himself having any beneficial interest therein or any power of beneficial disposition. Wills admittedly made by a member of a joint Hindu family purporting to dispose as of self acquired property, of joint family property in favour of the survivors have been solemnly propounded. Probate has seemingly been given as a matter of course. In this way the funds of the joint family property in the shares of companies have been obtained by the survivors. But the question arises whether survivors thus seeking to obtain their own property under the fiction of a devise, should be called upon to pay the full duty. \* \* \* Those who propound a will and claim under it can hardly be heard to say that the testator had no powers of beneficial disposition. When *ex concessis*, the alleged testator was a member of a joint Hindu family, and the whole property covered by the will was joint family property, one would have thought that there was no legal foundation for the will, no need of probate. It is not a satisfactory answer, that in probate proceedings the Court has no further concern in the matter than to see whether in fact the will was made, and whether in other respects it was a valid will. That is of course true but it does not exhaust the question. If those seeking probate mean to include the whole of the property devised under the exemption clauses, it does become the duty of the court to enquire so far, at least, as to satisfy itself that the conditions upon which exemption is granted have been fulfilled. Where, in the circumstances mentioned, the whole property is given to the sole survivor, who again *ex concessis* would take it in his own right, will or no will, the will propounded is on the face of it a mere nullity to which no effect could be given. Had it been necessitated owing to the testator having invested the joint family funds in the shares of the bank and other companies, then it appears to us that however anomalous the position, which is thus reached may be, it cannot be contended that since a will is necessary under which the nominal testator hands on this part of the joint family property to the survivor, he had not at the date of his death any beneficial interest in that property and was never more than a bare trustee of it for the survivor or survivors. The reason for the exemption is clear. But neither that reason nor any consideration of policy which occurs to us would warrant its extension this length. Although the devisee under the will takes but what is his own, if he needs a will to get it, we do not see why he should not pay the ordinary duty. He cannot be allowed to blow hot and cold and say in one breath that a

associations, whose arrangements are, therefore, subject to examination by Civil Courts whenever any civil interest is concerned.<sup>1</sup> The matter was carefully considered in *Macqueen v. Frackleton*,<sup>2</sup> where a dispute between a minister of the Presbyterian Church in Queensland and that Church as represented by its General Assembly arose. The Assembly suspended him from office, involving the dissolution of the pastoral tie and loss of emoluments, because he had brought an action against the Presbytery on the score that it had recommended the General Assembly to remove him from office. The ground of the Assembly's action was simple; it was part of the minister's duty to engage to submit to the jurisdiction of the Courts of the Church, whose constitution had been recognized by a Colonial Act of 1900, and by issuing a writ he had violated his duty. The High Court on appeal ruled that the minister was entitled to bring his action, as the courts of law were always open to a man who desired to assert property rights, and that he could not be held to have surrendered his future destiny into the hands of an infallible General Assembly. The Chief Justice relied on the *Cardross*<sup>3</sup> case in support of this view. O'Connor J. also agreed, but admitted that it might have been agreed by the plaintiff in clear terms that, if he did not respect the agreement to accept the jurisdiction of the Courts, he should cease to enjoy the privilege of membership, but he did not think that any such agreement had ever been made. Isaacs J. was in agreement with the other members of the Court that the so-called Church Courts had no coercive jurisdiction at all, but he could see no difficulty in the view that, while a man might be at liberty to appeal to a court of law to determine his legal rights, it might be open for a communion to say that by so appealing he had by prior agreement forfeited his right to be a member of that body.

Legislative action by Dominions for local Churches is often essential on the score of property rights. The Dutch Reformed

<sup>1</sup> *Johnston v. Ministers, &c., of St. Andrew's Church, Montreal* (1878), 3 App. Cas. 159; *Alexandre v. Brassard*, [1895] A. C. 301; *Polushie v. Zacklynski*, 37 S. C. R. 177; [1908] A. C. 65; *Deeks v. Davidson*, 26 Gr. 488; *Murray v. Burgers*, L. R. 1 P. C. 362.

<sup>2</sup> (1909) 8 C. L. R. 673 Cf. *Tovey v. Howison*, 7 C. L. R. 393, 406.

<sup>3</sup> *McMillan v. Free Church of Scotland*, 22 D. 290.

should now be accepted as representing the true scope of the said expressions. First as regards the meaning of the expression, in its application to joint family property with the incident of survivorship governed by the Mitakshara and the Mayuka in this Presidency it must be remembered that while the holder, a member of the family, in one sense is beneficially interested in the whole, the other members of the coparcenary are also beneficially interested in the whole and the beneficial interest of the holder is limited by the extent of the interest of other members. Further that interest disappears altogether on his death; and the survivors become the sole beneficiaries in the estate which stands in the name of the deceased person. On his death what is called his estate is no estate of his; and the legal title which still continues in the dead man is really the title of a man, whose beneficial interest in the property on his death is nothing. As regards property of this character it could properly be said that the deceased died possessed of it or was entitled to it either wholly or partially as a trustee within the meaning of s. 19-D. I do not think that the words used in the Schedule *viz.* 'Property held in trust not beneficially or with general power to confer beneficial interest', conflict with this view. I do not say that this point is free from difficulty. But if the rule of construction to be applied to an enactment of this nature is, as I think it should be, that a liberal construction ought to be given to words of exception confining the operation of the duty, I think that the words have been rightly construed to cover a case of a joint family property held by coparcener for the joint benefit of himself and others and in which his beneficial interest ceases on his death, so that at the date of his death his legal title or possession is without any beneficial interest therein. He would have no power on his death to confer a beneficial interest as he would have for instance in the case of his self acquired property.

The view of the Madras High Court proceeds on somewhat different lines; I have considered the *ratio decidendi* in that case. But I am unable to hold that the fact that a joint sharer has power to alienate his share for consideration in this presidency could alter the character of the property. If a sharer simply alienates his share for consideration and dies the next day without effecting partition, the purchaser would not get his share, as it would cease to exist before it is seized. He cannot make a gift of his undivided share and he cannot dispose of it by will. I am unable to hold that such limited power of dealing with the property can make any difference in the character of the deceased's title or possession of the property at the time of his death. With great respect for the learned judges I am unable to accept the *ratio decidendi* in that case. Lastly, even assuming that the scope of the expression used in s. 19-D and the Schedule is not clear, it cannot be said that it is so clear the other way that we should now decide to depart from the practice which has been uniformly followed in this

the passage of an Act in the Quebec Legislature<sup>1</sup> restoring to the Jesuits the properties which they had lost on the cession of Canada, either under the English law then introduced, or under the royal proclamation of 1791, suppressing the Order—already dissolved by Clement XIV in 1773—or by escheat in 1800, when the last member of the Order in Canada died. There was indignation in Ontario, but the federal Government declined, very properly, to disallow, being upheld on a vote of 188 to 13. Needless to say other religious orders flourish, and legal recognition is given to monastic vows and civil death.<sup>2</sup>

### § 3. *Church Endowments*

The question of Church endowments played a great part in early Canadian history. In the Act of 1791<sup>3</sup> it was expressly provided that of lands granted as nearly as possible one-seventh should be appropriated for the support and maintenance of a Protestant clergy. The Governor in Council of each province was authorized to establish in each township one or more parsonages or rectories of the English establishment, and to endow them with the lands thus appropriated. To these parsonages could be presented by royal authority clergymen of the Church of England, who would then have the same rights as the incumbent of an English parsonage. By s. 40 of the Act the spiritual jurisdiction and authority of the Bishop of Nova Scotia under the letters patent of 1787 were expressly saved. The Parliament could alter the provisions of the Act, but the measure must be laid before both Houses of the Imperial Parliament before assent, which must not be given if either House opposed it. A limited power of sale of such lands was given in 1827.<sup>4</sup> The Union Act of 1840<sup>5</sup> made a similar provision as to alterations of the law of 1791, but another Act<sup>6</sup> of the same year permitted the sale of the reserves, part of the proceeds to go to paying the stipends of existing clergy, forty-four rectories having been instituted by Sir J. Colborne in 1836, while of the

<sup>1</sup> Skelton, *Sir Wilfrid Laurier*, i. 351 ff.; Willison, i. 258 ff.; *Prov. Leg.*, 1867-95, pp. 407 ff. Macdonald, *Corr.*, pp. 440 ff., 452 f.

<sup>2</sup> *Parl. Pap.*, H. C. 385, 1877, C. 1828.

<sup>3</sup> 31 Geo. III, c. 31, ss. 36-42; Earl Grey, *Colonial Policy*, i. 253; Pope, *Sir John Macdonald*, i. 75 ff.; Hincks, *Rel. Endowments in Canada*.

<sup>4</sup> 7 & 8 Geo. IV, c. 62.

<sup>5</sup> 3 & 4 Vict. c. 35, s. 42.

<sup>6</sup> 3 & 4 Vict. c. 78.

and "other property not subject to duty." The question is, whether the property for which the petitioner seeks letters of administration can be said to come under either of these categories, and, if so, whether wholly or partially. The petitioner contends that the property was trust property in the hands of the deceased, and he relies on the decisions in the case of *In the goods of Pokurmull Augurwallah*, 23 Cal. 980 and the *Collector of Kaira v. Chunilal*, 29 Bom. 151, and also on two unreported decisions of this Court. It is to be observed that in the Calcutta cases there was no argument and the decision proceeded on a statement drawn by the taxing officer in which great stress was laid on the fact that under the Mitakshara Law (as administered in Bengal) "an undivided coparcener cannot dispose of his share in the joint property, unless in case of necessity, without the consent of his coparceners". In neither the note to the taxing officer nor in the order of the taxing officer nor in the order of the court is there any reference to the words "not beneficially or with general power to confer a beneficial interest" which follow the word "property held in trust", in Annexure B. In the case of the *Collector of Kaira v. Chunilal*, 29 Bom. 151, the chief question considered was whether limited grant sought for in that case could be granted at all. The character of the property as trust property was not discussed in the judgment but was held to be concluded by the decision in *In the goods of Pokurmull Augurwallah*, 23 Cal. 980. In neither of the unreported cases in this court was the question argued. In the earlier of them (*In re T. Swaminathaiyer deceased*), the question was raised by the taxing officer in a note for orders in which he referred to *In the goods of Pokurmull Augurwallah*, 23 C. 980, as supporting the petitioner's contention that the ancestral joint property was held by the deceased as trust property and therefore not liable to duty on taking out letters of administration, and the learned Chief Justice accepted the suggestion of the taxing officer. In the latter case no note for orders is forthcoming but Wallis, J., seems to have followed the precedent "*In re Swaminatha Aiyar*". Thus it would seem that the two precedents in this Court, and also the Bombay case followed the decision in *In the goods of Pokurmull Augurwallah*, 23 Cal. 980. But in this Presidency, differing from Bengal, it has long been held that under the Mitakshara Law as administered in this part of India an alienation by sale or mortgage by an undivided member of his interest in the joint family property, is valid. *Aiyyagari Venkataramayya v. Aiyyagari Kamayya*, 25 Mad. 690. He can also at any time enforce partition of his own share. That being so, it seems impossible to hold that the property in the present case was held by the deceased, so far at least as his own share in it was concerned, "as trust property not beneficially or with general power to confer a beneficial interest in it." He could have claimed partition, or he could have sold or mortgaged his undivided share and have applied the proceeds for any purpose he pleased. In my opinion, therefore, the interest of



or Orange River Colony, though there certain grants were made by the Legislature.

The situation in Northern Ireland and the Irish Free State is peculiar, because both these territories are bound not to support any religion from public funds nor to prejudice any person on religious grounds. In Malta the Constitution enunciates as fundamental the doctrines of liberty of conscience and the free exercise of religious worship, and provides that no person shall be subjected to any disability or excluded from holding any office by reason of his religious profession. This principle is not modified as regards free exercise of religion even by the proviso of public law and morality, but this, of course, is understood. The Constitution of Malta is silent on the score of religious education, it being assumed that the children of Maltese parents will be brought up in schools including the teaching of the Catholic faith, but in the case of Ireland there is a definite prohibition of differentiation as regards State aid between schools of different denominations, or prejudicing the right of a child to attend a school receiving public money without attending the religious instruction given at the school. In the case of Northern Ireland much feeling was caused by the mistaken policy of the Act of 1923, in which s. 26 provided that an education authority should not provide religious instruction in any public elementary school, while s. 66 (3) declared that an education authority should have no power to require that teachers appointed for any provided or transferred school should belong to, or profess the tenets of, any particular Church. The result of these unwise clauses, clearly unnecessary as they were, was that the private schools could not be transferred to the State, and the Government in 1925 had to come down with a Bill which made it clear that the system of religious instruction where desired by parents of pupils would go on as before. Further, the local schools committees were given advisory functions in selecting teachers for transferred schools, thus securing that the children were taught by duly qualified persons, and the offending clauses above cited were duly repealed. The Bill was gladly received by all concerned, seeing that it was manifestly just and merely preserved the *status quo* under the Commissioners of National Education, the Protestants asking nothing that was not equally open to Roman Catholics. What

*v. Collector of Ahmedabad*, 77 I. C. 749 = 48 B. 75 = 22 B.L.R. 1240 = 1924 Bom. 228. We think we must follow the principle laid down in *In re Desu Manavala Chetty* and hold that petitioner is only bound to pay stamp duty for probate on the amount of the right, title and interest of the testator in the property bequeathed and so far as ancestral property is concerned that would be  $\frac{1}{4}$ th of the ancestral estate. If, of course, there is other separate non-ancestral property, separate fee will have to be paid on that."

**Patna.**—The High Court of Patna has held in *In re Estate of Ram Kumar Prasad*, 5 Pat. L. J. page 510 that they prefer to follow the decision of the High Court of Madras in 33 Mad. 93 and the Bombay view in 39 B. 245. "The factum of the will alone can be established in probate proceedings and it is not for the court in these proceedings to consider whether the testator had or had not the power to dispose of the property in the will."

**Property over which the deceased had power of appointment.**—The question is whether it is property. The view taken by the High Court of Madras in *In re Lakshminarayani Ammal*, 25 M. 515, is that the general power of appointment which a deceased possessed is property. "Property is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have" per Langdale, M. R., in *Jones v. Skinner*, 5 L. J. Ch. 87 at p. 99. This view is not accepted by the Calcutta High Court in *In the goods of Saleh Manasseb*, 60 Cal. 1016 = 1933 Cal. 924. Lord Williams, J., observes at page 1020 of the 60 Cal. case, that the Madras "decision was based on some confusion of thought, and an incorrect reference, and is otherwise unsatisfactory." There seems to be hardly any justification for this strongly worded criticism. The Calcutta High Court holds that it is not property, because according to the English decisions based on s. 38 of 59 Geo. IV, C. 184, which is exactly similar in language to Art. 11 Sch. I of the Court-Fees Act, such property over which a person has only a general power of appointment is not his property. The English law was amended by ss. 4 and 5 of the Stamp Duties Act of 1860 (23 Vict., C. 15) and by s. 2 of the Finance Act of 1894 (57 and 58 Vict., C. 50) and consequently duty is now payable on such property. There being no provision in the Court-Fees Act corresponding to the amending English Act it is opined that such property is not taxable. But this view overlooks s. 91 of the Indian Succession Act, under which a general power of appointment is property, since where the donee of the power bequeaths all his property, it includes also the property over which he has a general power of appointment. Further Annexure B of Sch. III exempts property held in trust. But an exception is grafted to it *viz.* property over which the testator had a general power of appointment. If such property is not property liable to be taxed under the Act, where is the necessity for this specific exception in the exemption clause? It is observed by

alleging that those who, being Catholics, had not been married by a Catholic priest, were as a result of the *Ne temere* decree not lawfully married. The Bill proposed that a penalty would be imposed on any person who asserted that persons duly married under the Act of 1899 were not truly and sufficiently married, or who alleged the illegitimacy of the children of such marriages. Incredible to say, the Bill was actually defeated by one vote in the Upper House, which apparently deemed its duty to be to encourage onslaughts on the legislation of the State, the grounds alleged for attack being purely sectarian. The Ministry reintroduced the Bill in 1925 and secured its passage, but only after the change of the terms proposed to the colourless 'husband and wife'. Even so it was calculated that the defeat of the Government at the ensuing election was due to sectarian prejudice.<sup>1</sup>

In Quebec in 1923<sup>2</sup> an amazing state of affairs came to light. It appeared that the Protestants of Quebec had since 1903, by an Act of that year, been placed in the absurd position of having logically to admit Jews to a share in the control of Protestant schools, and to recognize the qualifications of Jewish teachers. Fortunately the constitutionality of the Act was denied by the Quebec Court at the close of 1924, negating the ludicrous claim that Jews were intended to be included in the term Protestant, which has always had a definite meaning in Canada. The fault of the Protestant community in acquiescing in the Act of 1903 is inexplicable, and it was very natural that the Jews should not merely object to any interference with the Act, but should claim that they should be given a greater share of control and be allowed to manage all schools in which more Jewish children were present than Protestant. The principle of separate schools clearly demands fair treatment of all denominations, but not the flinging of the burden of Jewish schools on to the Protestants.

<sup>1</sup> A similar difficulty was met by legislation in New Zealand without acute controversy (No. 65 of 1920).

<sup>2</sup> *Canadian Annual Review*, 1923, pp. 611 f.; 1924-5, pp. 321-3; 1925-6, pp. 373, 391, 392. On a reference on appeal the Supreme Court of Canada also denied the position of Jews as Protestants and affirmed the legality of distinct schools for Jews. See Act 1925, c. 45.

## Article 12.

Certificate under the Succession Certificate Act, 1889.

In any case

...

Two per centum on the amount or value of any debt or security specified in the certificate under s. 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act,

NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

## COMMENTARY.

**Local amendments.**—This article has been amended in Bengal, Bihar and Orissa, Bombay, Central Provinces, Madras and United



six and a half per centum on the next one lakh of rupees,  
and  
seven per centum "

(b) after the words " seven and a half per centum " the following has been inserted, namely : —

" on such portion of the next one lakh and fifty thousand rupees,  
eight and a quarter per centum on such portion of the next fifty thousand rupees,  
nine per centum on such portion of the next one lakh of rupees.  
nine and three-quarters per centum on such portion of the next one lakh of rupees,

and

ten and a half per centum."

**Bihar and Orissa.**—For the entry in the second column of of Article 12 and for the first paragraph in the third column of the said Article, the following has been substituted by Act I of 1922, namely :—

When the amount or value of any debt or security specified in the certificate under s. 8 of the Act exceeds one thousand rupees on such amount or value up to ten thousand rupees.

Two per centum and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act, three per centum.

and

when such amount or value exceeds thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,

Three per centum and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act four and-a-half per centum.

and

when such amount or value exceeds fifty thousand rupees on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,

Four per centum, and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act, six per centum.

and

when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.

Five per centum, and on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act, seven and-a-half per centum.

**Bombay.**—The following Article is substituted by Act II of 1932, namely : —

12. Certificate under Part X of the Indian Succession Act, 1925.

The fee leviable in the case of a probate (Article 11,) on the amount or value of any debt or security specified in the certificate under s. 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under s. 376 of the Act.

Equally incompatible with autonomy is the fact that no Dominion has any vital power of constitutional change. In the case of Canada the position, indeed, though explicable and natural, is almost ludicrous. It was impossible for the Dominion in the crisis of the war, though there was pressing need for avoiding a general election if that could be helped, to proceed by its own legislation, and an appeal to the United Kingdom had to be dropped in 1917, because, while the proposal could have been passed through both Houses, there would have been too much opposition for the Imperial Parliament to feel justified to act. Not a single clause of the *British North America Act* affecting the framework of the Dominion federation can be altered save by the position of first attaining practical unanimity in the Dominion, both as regards the federal Parliament and the provincial Legislatures, and approaching the Throne with humble addresses. It is easy to understand that Quebec, eager for her privileged position, is unwilling to see any wider power of alteration entrusted to the people of Canada, but the fact remains that a nation which is thus fettered and bound is not autonomous, and, if it acquiesces in the position, it is because it is conscious that it has not yet attained national status, but still is a quasi-dependency. No censure of such an attitude is just or desirable. Each country is the best judge for itself whether it has the strength to claim national status or whether, seeing that it has many years before it, it should not first consolidate its strength before it seeks to alter its status.

The Commonwealth is in no vitally better condition. It is true that on the surface the people of the Commonwealth have a wide power of constitutional change, but that is confined, it seems certain, within the framework of a federal Constitution, and any wider change would not be legitimate. The Irish Free State is bound to a treaty which cannot be altered save by the consent of the Imperial Government and Parliament, and from which neither has any intention of deviating. The unitary colonies of the Union of South Africa, New Zealand, and Newfoundland are in a freer condition as to alteration of the details of their Constitutions, but no less than the greater Dominions, or the responsible government colonies of Malta and Southern Rhodesia, they are essentially dependencies. Change details as

**Madras.**—The following is substituted for Art. 12 by Act V of 1922, namely :—

12. Certificate under the Succession Certificate Act, 1889.	When the amount or value of any debt or security specified in the certificate under s. 8 of the Act does not exceed five thousand rupees.	Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act.
	When such amount or value exceeds five thousand rupees.	Three per centum on such amount or value and four and a-half per centum on the amount or value of any debt or security to which the certificate is extended under s. 10 of the Act.

Note —(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

**United Provinces.**—For the entries in the first and second column and for the first paragraph in the third column, the following has been substituted by Act III of 1932, namely :—

12. Certificate under the Indian Succession Act, 1925.	1. When the amount or value of any debt or security specified in the certificate under section 374 of the Act does not exceed twenty thousand rupees;	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.
	and 2. When such amount or value exceeds twenty thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of twenty thousand rupees;	Two and a half per centum on such amount or value and three and three-quarters per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.



policy, though well meant, was not brilliantly conducted. Canada has not dared to attempt to carry out her wish to extinguish the hereditary effect in Canada of honours to dealers in hog products and party journalists which she disapproves, and such subservience cannot be regarded as compatible with autonomy. General Hertzog has refrained from any suggestion of such a result, and the Irish Free State is in like condition. Moreover, all the Dominions have placed on record that, if they pass any legislation affecting the security of stocks which have been admitted to trustee rank under the *Colonial Stocks Act*, 1900, these Acts will properly be disallowed. And the protagonist of autonomy, General Smuts, has frankly admitted that the Union cannot pass an Act severing connexion with the Empire, and that neither the Governor-General nor the Crown would be entitled to assent to such an Act.

Still more obvious is the paramount power of Imperial legislation, solemnly reasserted in the Irish Constitution Act of 1922, as an effective rebuke to the vain boast of the Constitution that all powers in Ireland are derived from the people, whereas not a single power could be derived from any other source than the legal authority given by the Parliament of the United Kingdom. It is idle to ignore the fact that any Imperial Act which by its express terms of necessary intendment applies to the Dominions binds all their people, their Governments, and their Courts, and the *British Nationality and Status of Aliens Act*, 1922, is a recent example of the frank use of such superiority over all Dominion legislation, just as is the Act of 1923 regarding the Turkish treaty of peace. Moreover, another side of this activity is the unquestioned supremacy and binding force of all the old Imperial Acts which refer to the Empire as a whole. Their existence precludes the necessity of frequent exhibitions of the supreme power of legislation, but it was only on 12 October, 1925, that an Order in Council under the *Fugitive Offenders Act*, 1881, applied part ii of that Act to the whole of the British possessions, protectorates, and mandated territories in the Pacific. The convention that Imperial legislation affecting the Dominions ought to be passed after consultation with the Dominions is important and normally acted on, but no Dominion wishes will preclude the Imperial Government from passing an Act like the *Indemnity Act*, 1920, where it is deter-

provides that when the District Judge grants a certificate, he shall specify the debts and securities set forth in the application for the certificate, and may thereby empower the person to whom the certificate is granted

(a) to receive interest or dividends on, or

(b) to negotiate or transfer, or

(c) both to receive interest or dividends on and to negotiate or transfer the securities or any of them.

**Section 13 of the Succession Certificate Act.**—Arts. 12 and 12-A were substituted for the old Art. 12 of the Court-Fees Act by s. 13 of the Succession Certificate Act. S. 13 of that Act still remains in force and is not repealed by the Indian Succession Act 1925.

**No exemption of fee in the grant of succession certificates.**—As in the case of Probates and Letters of Administration there is no exemption of the payment of any court-fees where the value of the estate is below Rs. 1,000, though this has been remedied in Bengal, Bihar and Orissa and Bombay by amendment Acts. Nor was there such an exemption under Art. 12-A either as it originally stood. But Art. 12-A has since been amended by the Court-Fees Amendment Act VII of 1910 and amended locally by Bombay Act III of 1932.

**Extension of certificate.**—Section 10 of the Succession Certificate Act dealt with extension of certificates and it is now reproduced by s. 376 of the Indian Succession Act. By virtue of that section a District Judge may on the application of the holder of a certificate extend the certificate to any debt or security not originally specified therein, and every such extension shall have the same effect as if the debt or security to which the certificate is extended had been originally specified therein. In *In re Nalinikanta Pal*, 60 Cal. 1262 = 37 C.W.N. 930, it has been held that, where the original application is in respect of an amount less than Rs. 1,000 but the amount is exceeded by a later application, court-fee is payable at 2 per cent on the original certificate and at the enhanced rate of 3 per cent under Bengal Act II of 1922 in respect of the extensions. In this case the petitioners originally applied for a certificate for the collection of debts amounting to Rs. 853-9-6, and the certificate was granted. Some time afterwards they applied for extension of the original certificate in respect of some further debts amounting to Rs. 146-5, and the extension was granted. No court-fee was paid on these two occasions. Later on they again applied for a further extension in respect of two debts amounting to Rs. 300 and deposited Rs. 9 as court-fee on the Rs. 300. It was held that as the total of the debts in the original certificate and the two extensions together exceeded Rs. 1,000, court-fee was payable on the amount of the original certificate at 2 per cent and on the amounts of the extensions at 3 per cent. It is submitted that this position must be justified on the basis of the Bengal Art. 12 as it

Colonies, who were naturally more conservative than the delegates. Canada in 1875 would have given no appeal if it could, and in 1888 it did, though vainly, enact that no appeal should lie in criminal cases. Quebec dominates Canadian action and insists on the appeal, but it is a badge of inferiority, and the mere fact that the Imperial Parliament will not even allow a single Court of Appeal containing Dominion judges to hear all appeals within the Empire is sufficient proof of its conviction, due to the legal professions of England, of the hopeless inferiority of Dominion judges.

It is instructive to note that, despite the apparatus of Imperial War Cabinets and Conferences, and admission of the Dominions into the League of Nations, there remains no real equality of the Dominions in matters of foreign policy. The issues of war and peace rest decisively with the Imperial Government; no Dominion can declare war, none can make peace; no Dominion can even make a commercial treaty except with the sanction of the Imperial Government, and subject to ratification with the same sanction. The alleged concession of the treaty right to the Dominions in 1923, and even 1926, is a mere chimera. No Dominion can accredit a minister; it must be done for that Dominion by the Imperial Government. The Imperial Government remains ultimately responsible for every wrong done to foreigners by British subjects, which under international law gives rise to an international claim. It is perfectly open for foreign Governments to address through their officials in a Dominion requests for redress for wrongs, but, if this is not accorded, or if the Dominion on being approached will not consent to refer the matter to the Permanent Court of International Justice, then the foreign power is entitled to seek redress from the Imperial Government, and indeed must do so, if it is proposed to carry the question to the extent of a breach of friendly relations. No one is so foolish as to imagine that any grave issues between the United States and Canada—improbable as it may seem—could be disposed of by the United States without bringing in the Imperial Government, which would have to make up its mind whether it supported or declined to support the action of Canada which was impugned. The mere fact that the Locarno Pact was concluded long before a single

But the Lucknow High Court has recently held that the words "the amount or value of any debt or security" do not refer to anything except individual debts and individual securities and that therefore, amount payable in respect of an application for a succession certificate is to be calculated according to the amounts of the individual items comprised in the application and not according to the total amount of those items. *Pirihvi Nath Bhargawa v. Estate of Late Trilok Nath Bhargawa*, 151 I. C. 262=11 O. W. N. 1079=1934 Oudh 414. However as observed above, the difficulty would arise, if this view is accepted, in assessing the duty payable where the grant is extended. The Bengal amendment steers clear of this difficulty by specifically laying down that the aggregate amount or value of the debts or securities specified in the certificate and of those to which the certificate has been extended governs the rate for further extensions.

**Amount of debt**—This includes interest on the debt also on the date on which the inclusion of the debt in the certificate is applied for. See Note (1) to the Article.

**Value of the security.**—It is market-value on the day on which the inclusion of the security in the certificate is applied for. See Note (2) to the Article.

**Fee to be levied.**—The duty is two per cent on the amount or value of the debt when a certificate is first applied but a higher duty of three per cent is levied in the case of extension of certificates. When a portion of debt alone remains due, and a certificate is applied for to collect same, fee is payable only with respect to the value of the debt as put in the application. *Alihan v. Puttan Bibi*, 19 A. 129.

**Successive devolution of estate.**—Where a person obtained a succession certificate to collect a certain debt due to the deceased but the certificate holder himself died without collecting the debt and the heir of the estate of the deceased next in the chain applied for such certificate, a fresh fee has to be paid. The payment of duty by the prior holder of the estate could not enure to the benefit of the later heir. *In re Sorojebashini Devi*, 20 C. W. N. 1125=36 I. C. 125.

**Mode of collecting court-fees on certificate.**—S. 379 of the Indian Succession Act corresponding to s. 14 of the Succession Certificate Act runs as follows :—

"(1) "Every application for a certificate or further extension of a certificate shall be accompanied by a deposit of a sum equal to the fee payable under the Court Fees Act 1870 in respect of the certificate or extension applied for.

(2) If the application is allowed, the sum deposited by the applicant shall be expended, under the direction of the Judge, in the purchase of the stamp to be used for denoting the fee payable as aforesaid.

(3) Any sum received under sub-section (1) and not expended under sub-section (2) shall be refunded to the person who deposited it." Regarding estate of persons who died in the war, see Remissions allowed by the Local Governments cited in Appendix.

cannot fill. Even the Union of South Africa owes its power to exist to British protection ; else the rapid German penetration of South-West Africa must have ended in German occupation of the territory, which by itself could have done nothing effective in self-defence. It is curious how completely these facts are forgotten even by men so well-meaning as Messrs. Bruce and Massey in their demands for a British preference.

(b) *The Unity of the Crown*

The Crown unquestionably serves in the most effective way as the symbol and expression of Imperial unity. The fact that—outside the Irish Free State—the government is regularly carried on in the name of the Crown is much more than a mere form ; it familiarizes the people of the Empire with the sense of their membership of a single organization. Moreover, the Crown serves to satisfy one of the most essential needs of the human mind at the normal level of intelligence, the desire for something concrete as a centre of attention. The idea of a common allegiance and a common loyalty is furthered by the monarchical system of government in the Empire in a manner which probably cannot be exaggerated. If it were removed, it is extremely difficult to see how it could effectively be replaced. There is no difficulty in acting in the name of the State in lieu of the Crown, but two people far severed in space will not be encouraged to cherish any sense of unity by such a device. The most convinced admirer of republican institutions and opponent of the more unattractive side of courts must confess that it would be extremely difficult to devise a satisfactory substitute, for Imperial as opposed to local purposes, for the House of Windsor. Nor can any fair judgement deny that the abstract unity of the Crown has been made infinitely more real by the Prince of Wales's peregrinations of the Empire. The same feeling which prefers a King to a State as an object of loyalty is greatly, indeed rather amazingly, reinforced by the presence even temporarily of a future sovereign.<sup>1</sup> There can be no doubt that a very considerable impression was made even on the Boers of the Union by the actual presence among them of the Prince of Wales. In no respect, moreover, does the

<sup>1</sup> The Duke of York's visit to Australia and New Zealand in 1927 was welcomed with great warmth in both Dominions.

## COMMENTARY.

**Amendments.**—This article was inserted by the Punjab Courts Act, 1884 (18 of 1884,) s. 71, as amended by the Punjab Courts Act, 1899 (25 of 1899), s. 6, Punjab and N. W. Code. The words "or to the court of the Financial Commissioner \* \* \* of the Punjab Tenancy Act 1887" were added by s. 1 of the Court-Fees Amendment Act 1900 (IX of 1900). This section was repealed by the Punjab Courts (Amendment) Act 1912 in so far as it affected the Punjab and was re-enacted by s. 6 of the Punjab Act VII of 1922 as amended. The several verbal amendments that have been made to the Article are set out in s. 6 of the Punjab Act VII of 1922 printed in Appendix and they have been incorporated in the Article. The expression "High Court of Judicature at Lahore" are substituted for the words "Chief Court in the Punjab" by reason of Punjab Act XVIII of 1919.

**N. W. Frontier Province.**—Similar fees are payable on the like applications to the Court of the Judicial Commissioner of the N. W. Frontier Province, *see* s. 85 (1) of the N. W. Frontier Province Law and Justice Regulation, 1901 (7 of 1901) Punjab and N. W. Code.

**Revision Petitions.**—Applications in revision to the High Court are governed in Punjab by Art. 13, Sch. I, according to which the court-fee payable is Rs. 2 when the amount or value of the subject-matter does not exceed Rs. 25 and when such amount or value exceeds Rs. 25, the fee payable is the same as on a memorandum of appeal. An appeal against an order filing or refusing to file an award in an arbitration proceeding without the intervention of the court, falls under Sch. II, Art 11, as it is not an appeal against a decree, and is liable to a court-fee of Rs. 4 under that Article as amended in Punjab. Hence an application for revision against an order of the lower appellate court in such a case is also chargeable to the same court fee. *Kanhaya Lal Sita Ram v. Daulat Ram Naubat Rai*, 1929 Lah. 367 = 110 I. C. 302.

An order refusing an application to set aside an award when the reference is in a suit pending before court, is not appealable but such an order is analogous to an order filing an award under Cl. 21 of Sch. II, C. P. C. an appeal against which is provided for under s. 104 (f) C. P. C. and is chargeable to Rs. 4 only under Sch. II, Art. 11. An application for revision against such an order is therefore chargeable to Rs. 4 only. *Harbajan Singh v. Kalu Mal* 1929 Lah. 369 = 111 I. C. 145, dissenting from *Narpat Rai v. Devi Das*, 13 P. W. R. 1911 = 4 P. L. R. 1911 = 9 I. C. 388. But in an earlier case, *J. A. Mathews v. Messrs. Singleton Benda & Co.*, 108 I. C. 382, it has been held that in an application for revision against an order rejecting objections to an award, *ad valorem* court-fee is payable on the amount of the decree based on the award, where it exceeds Rs. 25. When the subject-matter of the dispute exceeds Rs. 25, the fact that no decree was passed at the date of the application for revision would not affect the question of court-fee. *Narpat Rai v. Devi Das*, 13 P. W. R. 1911 = 4 P. L. R. 1911 = 9 I. C. 388.

by the Governor and was in Victoria, none the less he had accepted an office of profit under the Crown, and could not continue to sit in the House of Commons. Again, in *Williams v. Howarth*,<sup>1</sup> a soldier of New South Wales who served in the South Africa War desired to claim from the local Government the full 10s. a day at which he had agreed to serve; the State Government pointed out that he had received 4s. 10d. from the Imperial Government and that this amount should be set off. The Supreme Court of New South Wales held that a contract was a contract, and that the Crown in New South Wales and in the Imperial Government were two different things, but the Privy Council negatived this reasoning, ruling that there was in the case nothing to make it necessary to insist on the diverse aspects of the Crown. The doctrine has been repeated in a new form by the High Court of Australia. It was *prima facie* reasonable to hold that the Crown in the Commonwealth and in the States were two different things, so that a Commonwealth Act could not be deemed to bind the Crown in its State aspect and vice versa. But the High Court frankly held that the Crown is essentially one and indivisible, and that a Commonwealth Act could bind the Crown in its State aspect as much as it bound the Crown in its Commonwealth aspect, and could bind the Crown in the former aspect without affecting it in its latter side.<sup>2</sup> This accords perfectly well with the fact that a petition of right only lies against the Crown in the Government by which the debt if any is due.<sup>3</sup> In this case, obviously the whole essence of the matter is that in one specific aspect there is a right against the Crown, which does not exist in any other.

## § 2. *The Future of the Empire*

### (a) *Early Views of Imperial Relations*

The loss of the American colonies was responsible for the widespread pessimism as to the value of colonial possessions which prevailed in the first half of the nineteenth century; if

<sup>1</sup> [1905] A. C. 551, overruling 2 S. R. (N.S.W.) 452.

<sup>2</sup> *Amalgamated Society of Engineers v. Adelaide Steamship Co.*, 28 C. L. R. 129; *Pirrie v. McFarlane*, 36 C. L. R. 170 (State law).

<sup>3</sup> This is now established by *A.-G. v. Great Southern and Western Railway of Ireland*, [1925] A. C. 754; *Price v. R.* (1926), 42 T. L. R. 179.

## COMMENTARY.

The article was inserted in the first schedule to this Act in its application to Upper Burma, *see* the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s. 36.

The words "or s. 14 of the Upper Burma Civil Courts Regulation, 1896," were repealed by the Upper Burma Civil Courts (Amendment) Regulation, 1903 (V of 1903), s. 4.

Section 115 has been substituted for s. 622 of the Code of Civil Procedure.

**Table of rates of ad valorem fees leviable on the institution of suits.**

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	140	150	11 4
5	10	0 12	150	160	12 0
10	15	1 2	160	170	12 12
15	20	1 8	170	180	13 8
20	25	1 14	180	190	14 4
25	30	2 4	190	200	15 0
30	35	2 10	200	210	15 12
35	40	3 0	210	220	16 8
40	45	3 6	220	230	17 4
45	50	3 12	230	240	18 0
50	55	4 2	240	250	18 12
55	60	4 8	250	260	19 8
60	65	4 14	260	270	20 4
65	70	5 4	270	280	21 0
70	75	5 10	280	290	21 12
75	80	6 0	290	300	22 8
80	85	6 6	300	310	23 4
85	90	6 12	310	320	24 0
90	95	7 2	320	330	24 12
95	100	7 8	330	340	25 8
100	110	8 4	340	350	26 4
110	120	9 0	350	360	27 0
120	130	9 12	360	370	27 12
130	140	10 8	370	380	28 8



asking for guarantees for railways, grants for fortresses, and for works of defence. Sir G. Cornewall Lewis,<sup>1</sup> after carefully proving that Britain derived neither tribute, military assistance, trade facilities, faculties for the transportation of criminals, nor trade outlets in substantial measure from her colonies, was prepared to let them go despite the prestige they brought. Disraeli wrote to Lord Malmesbury on 13 August 1852<sup>2</sup> that 'these wretched colonies will all be independent in a few years and are a millstone round our necks'. J. A. Roebuck,<sup>3</sup> who defended a colonial empire in general, despaired of Canada. A. Mills,<sup>4</sup> who wrote interestingly on Colonial Constitutions, recorded ultimate independence as accepted as the end to be achieved. Lord Grey<sup>5</sup> admitted to Lord Elgin that separation was accepted as desirable by some members of the Cabinet; R. Lowe<sup>6</sup> urged Lord Dufferin on appointment in 1872 to make it his business to get rid of the Dominion. Lord Clarendon on 1 June 1870<sup>7</sup> wrote to Lord Lyons that he wished the North American Colonies would disannex themselves, and a year earlier Lord Granville<sup>8</sup> had expressed the same views, owing in either case to the grave difficulties then experienced with the United States. It is clear that not only Sir James Stephen,<sup>9</sup> Permanent Under-Secretary for the Colonies from 1836 to 1847, but also Sir F. Rogers,<sup>10</sup> who filled the same office from 1860 to 1871, and Sir Henry Taylor were advocates of ultimate separation. Rogers's view was simply that 'a spirited nation will not submit to be governed in its internal affairs by a distant Government, and the nations geographically remote have no such common interests as will bind them permanently together in foreign policy with all its details and mutations'. A similar note was struck by Anthony Trollope,<sup>11</sup> who held that separation was ideal, because of the gain to the Colonies, whose advance was retarded by connexion with the Mother Country, while a state of dependence was humiliating and would not be tolerated by

<sup>1</sup> *Essay on the Government of Dependencies* (1841).

<sup>2</sup> *Life*, iii. 385.

<sup>3</sup> *The Colonies of England* (1849).

<sup>4</sup> *Colonial Constitutions* (1856).

<sup>5</sup> See Morison, *British Supremacy*, p. 266.

<sup>6</sup> Lyall, *Life of Lord Dufferin*, i. 286.

<sup>7</sup> Newton, *Life of Lord Lyons*, i. 292.

<sup>8</sup> Fitzmaurice, *Life*, ii. 22.

<sup>9</sup> Ed. C. E. Stephen (1906).

<sup>10</sup> *Letters of Lord Blackford* (1896).

<sup>11</sup> *The West Indies*, p. 84; *North America*, i. 129; *Australia*, i. 22, 353 ff.; ii. 497.

When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper Fee	When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper Fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
2,600	2,700	160 0	8,750	9,000	435 0
2,700	2,800	165 0	9,000	9,250	445 0
2,800	2,900	170 0	9,250	9,500	455 0
2,900	3,000	175 0	9,500	9,750	465 0
3,000	3,100	180 0	9,750	10,000	475 0
3,100	3,200	185 0	10,000	10,500	490 0
3,200	3,300	190 0	10,500	11,000	505 0
3,300	3,400	195 0	11,000	11,500	520 0
3,400	3,500	200 0	11,500	12,000	535 0
3,500	3,600	205 0	12,000	12,500	550 0
3,600	3,700	210 0	12,500	13,000	565 0
3,700	3,800	215 0	13,000	13,500	580 0
3,800	3,900	220 0	13,500	14,000	595 0
3,900	4,000	225 0	14,000	14,500	610 0
4,000	4,100	230 0	14,500	15,000	625 0
4,100	4,200	235 0	15,000	15,500	640 0
4,200	4,300	240 0	15,500	16,000	655 0
4,300	4,400	245 0	16,000	16,500	670 0
4,400	4,500	250 0	16,500	17,000	685 0
4,500	4,600	255 0	17,000	17,500	700 0
4,600	4,700	260 0	17,500	18,000	715 0
4,700	4,800	265 0	18,000	18,500	730 0
4,800	4,900	270 0	18,500	19,000	745 0
4,900	5,000	275 0	19,000	19,500	760 0
5,000	5,250	285 0	19,500	20,000	775 0
5,250	5,500	295 0	20,000	21,000	795 0
5,500	5,750	305 0	21,000	22,000	815 0
5,750	6,000	315 0	22,000	23,000	835 0
6,000	6,250	325 0	23,000	24,000	855 0
6,250	6,500	335 0	24,000	25,000	875 0
6,500	6,750	345 0	25,000	26,000	895 0
6,750	7,000	355 0	26,000	27,000	915 0
7,000	7,250	365 0	27,000	28,000	935 0
7,250	7,500	375 0	28,000	29,000	955 0
7,500	7,750	385 0	29,000	30,000	975 0
7,750	8,000	395 0	30,000	32,000	995 0
8,000	8,250	405 0	32,000	34,000	1,015 0
8,250	8,500	415 0	34,000	36,000	1,035 0
8,500	8,750	425 0	36,000	38,000	1,055 0

1870<sup>1</sup> a categorical assurance to commissioners from New Zealand that they had no idea of separation. It is true that neither Lord Granville<sup>2</sup> in reply to Lord Carnarvon in the Lords on 14 February, nor Mr. Gladstone<sup>3</sup> in response to Mr. R. R. Torrens, ex-Premier of South Australia, in the Commons on 26 April 1870, was absolutely satisfactory, but on 12 May 1871<sup>4</sup> the Under-Secretary for the Colonies was authorized to express a very emphatic opposition to any idea of separation, and Mr. Gladstone,<sup>5</sup> though he may have believed that separation was ultimately inevitable, strenuously denied that he had ever looked forward to it with anything but regret or had ever contemplated it as anything but undesirable. Disraeli,<sup>6</sup> who seems to have been more bitterly opposed to the possession of colonies than almost any one save Robert Lowe, came out in 1872 with the preservation of the Empire as a part of the Conservative creed, but he had quaint views on the preservation. He censured severely the failure to enforce on the Colonies free trade, and would have claimed the retention of the Crown lands for British benefit, the fixing of their duties as to defence, and the creation of a representative council in London. The Royal Colonial Institute, whose beginnings date from 1868, became a supporter of the United Empire which was its motto, and by 1871 the movement towards a higher appreciation of and closer relations with the Colonies had so grown in respectability that an important meeting at the Westminster Palace Hotel in July showed a wide circle of distinguished names. There were various schemes on foot for furthering such closer relations. One, which had the support of Sir Bartle Frere, was the admission of colonial representatives to the Imperial Parliament,<sup>7</sup> either with votes or, to avoid the difficulty of party affiliations, without them, while the more simple scheme of admission to the Lords was favoured by Colonial writers among others. A true federation was recommended by Lord John Russell,<sup>8</sup> E. Jenkins, P. F. Labilliere, and F. Young, but

<sup>1</sup> Rusden, *New Zealand*, ii. 600 f.

<sup>2</sup> *Hansard*, ser. 3, cxcix. 213.

<sup>3</sup> *Ibid.*, cc. 1901.

<sup>4</sup> *Ibid.*, ccvi. 761-8.

<sup>5</sup> Cf. 4 Apr. 1849; *Hansard*, ser. 3, civ. 354; 28 March 1867; cxxxvi. 755; Parkes, *Fifty Years*, ii. 103.

<sup>6</sup> *Life*, v. 194 f.

<sup>7</sup> Lord Rosebery (29 July 1884) suggested their presence in the Lords.

<sup>8</sup> *Speeches and Despatches*, p. 152; Labilliere, *Federal Britain*; Young, *Imperial Federation*.

# SCHEDULE II. FIXED-FEES.

## Article 1.

Number.	Proper Fee.	Provincial Amendments.						
		Main Act.	Bengal.	Bihar and Orissa.	Bombay.	Madras	Punjab.	United Provinces.
1. Application or petition.	(a) -- When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings ;	One anna.	Two annas.	Two annas.	Two annas.	One anna.	Two annas.	Two annas.
	or when presented to any officer of land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;	do	do	do	do	Two annas.	do	do
	or when presented to any Municipal Commissioner [or member of a District Board--Beng.] under any Act for the time being in force for the conservancy or improvement of any							

Federation League came into being in 1884. It is, however, significant that at the very first meeting on 29 July 1884 to further its inception, the warning that it was doomed to failure was given. Mr. W. H. Smith, First Lord of the Admiralty in the administration of Lord Beaconsfield from 1877 to 1880, propounded the theory that the existing relations of the Empire must inevitably lead to federation or disintegration, but Sir C. Tupper, High Commissioner for Canada, could not concede the legitimacy of the alternatives, urging that existing conditions might well develop satisfactorily in some other sense. None the less the Federation League was ultimately formed, and secured a good deal of patronage. On Mr. W. E. Forster's death in 1886, Lord Rosebery became President, and, when he resigned in 1892 on entering Mr. Gladstone's Ministry, Lord Stanhope took his place. Branches were formed overseas; that in Canada<sup>1</sup> opposed naturally the annexationist propaganda in favour of the United States, and developed as a counter-movement the doctrine of Imperial preference, which naturally somewhat embarrassed the free-trade Federation in London. It had a considerable share in arranging the Colonial and Indian Exhibition of 1886, and immediately after it pressed on the Government the desirability of calling a conference of Empire delegates to consider the question of more effective defence of the ports and commerce of the Empire and the promotion of intercourse, commercial, postal, and telegraphic, between the various parts of the Empire in time of peace, and other means of closer relations. The Conference actually summoned was not asked to consider closer political relations, because it was known that in Australia at least such a discussion would be regarded with suspicion and dislike. The League, however, was satisfied with so much progress and aimed at securing the holding of further conferences and the effort to prevent in them the elimination of the political issue. But under Lord Rosebery's advice it made no effort to frame a federal scheme, until, on its urging Lord Salisbury on 17 June 1891 to call a conference to consider the sharing by the different parts of the Empire of privileges and responsibilities, that statesman demanded a definite scheme to place before any Conference. All, however, that could be excogitated was a

<sup>1</sup> Contrast Macdonald, *Corr.*, pp. 453, 458, 468.

Number.	Proper Fee.						
	Provincial Amendments.						
	Main Act.	Bengal.	Bihar and Orissa.	Bombay.	Madras.	Punjab.	United Provinces.
1. Application or petition—(Continued).	<p>[(a) When presented to a Collector or other Officer of Revenue for assistance under section 86 of the Bombay Land Revenue Code, 1879—added in Bombay.]</p> <p>(b)—When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any criminal court;</p> <p>or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;</p>	<p>In the case of a complaint or charge of an offence presented to a crl. court One rupee and in other cases Twelve as.</p>	<p>Twelve annas.</p>	<p>Eight annas.</p>	<p>In the case of a criminal complaint one Rupee and in other cases Twelve annas</p>	<p>One Rupee.</p>	<p>Twelve annas.</p>
		do	do	do	do	do	do

preferential trade relations as any help towards a political consolidation ; rather this is definitely held up as an alternative to such consolidation.

From the political point of view the Conferences, as will be seen, have shown a steady tendency towards the recognition of co-operation alone as the means of progress. The ideal of federation indeed did revive as the result of the War, for such events unsettle men's minds and drive them to clutch at straws. A perfectly honest attempt was made in 1916,<sup>1</sup> after a prolonged period of agitation, to induce the people of the United Kingdom and the Dominions to believe that an answer must be found to the question how a British citizen in the Dominions can acquire the same control of foreign policy as one domiciled in the British Isles. It is scarcely credible that groups of earnest students all over the Empire could have failed to see that the question was a mere absurdity. It was apparently supported by a quite ridiculous statement of Mr. Fisher, who had been Prime Minister of the Commonwealth, that, when he occupied that position, he had no say whatever in Imperial policy, while as an elector in Scotland he could heckle his member on questions of Imperial policy, and vote for or against him on that ground. There is no possibility of dealing successfully with political matters if one does not possess a sense of humour, and Mr. Fisher must often have regretted that he ever committed himself to this farrago of nonsense. Even the least intelligent of mankind must have realized that, if the Prime Minister of the Commonwealth had no voice in Imperial policy, it was not because he had not a vote in a Scottish village, but because the Commonwealth did not desire to take any interest in Imperial policy. The moment that Mr. Fisher awakened to the desire

<sup>1</sup> The admirable but not keen-minded Gen. Botha was rendered anxious by it (letter of 20 Oct. 1916), but Sir W. Laurier soothed his fear (Skelton, ii. 463 ff.). I dealt seriously with the absurdities of the *Round Table* group in the *Canadian Law Times*, xxxvi. 831 ff., not because it seemed worth while, but at the request of the late Mr. Lefroy, whose amiable character rendered it a pleasure even to waste time in exposing fallacies. The group seems of late years to have abandoned the pursuit of chimeras, to have acquiesced in the practical independence of the Irish Free State, and to be concentrating on the wise endeavour to interest the Dominions in foreign policy, especially in the case of New Zealand. This is all to the good, and much may be pardoned to youthful exuberance.

Number.	Main Act.	Provincial Amendments.					United Provinces.
		Bengal.	Bihar and Orissa.	Bombay.	Madras.	Punjab.	
1. Application or petition -- (Continued)		exceed Rs. 1000, 5 Rs.			does not exceed Rs. 1000, 5 Rs.	for taking some other judicial action Rs 5,	Companies Act, 1913 for winding up a company 50 Rs.
		(b) when the value of the suit exceeds Rs. 1000 ; 10 Rs.			(b) when the value of the suit or proceeding exceeds Rs 1000, 10 Rs.	(iii) in all other cases Rs. 2,	(2) under s. 115, C.P.C. for revision of an order 4 Rs.
		(ii) when presented to the High Court otherwise than under that section, 2 Rs.			(ii) when presented to a High Court otherwise than under that section, 2 Rs.		(3) In any other case, 3 Rs.



may be hoped that the idle follies of 1916 may not be allowed to be revived.<sup>1</sup> The silence of the protagonists of that movement of later years suggests that the folly of youth has been succeeded by the sobriety of age and experience.

(c) *The Proposals for the Independence of the Dominions and India*

If the movement for Imperial federation may be held to have gone to its deserved oblivion, there is decidedly more life in the movement in the Dominions for independence. It is important to note the contrast between that movement and the effort to secure Imperial federation. The latter represented essentially a British view; it had support in the Dominions in small coteries of students out of touch with Dominion ideals and public life, living in an unreal world of their own making. The movement for independence has practically no real support in the United Kingdom, even the Independent Labour party is not anxious for it, and in fact there is no evidence that even in the older times, when separation was looked forward to by many sections of the people as inevitable, the idea ever possessed much popularity with the workers. In the different Dominions the movement rests on varied causes, and its essence is that it has real popular support, though in different degrees in various Dominions.

In New Zealand and Newfoundland, indeed, the movement has no real support. In the former a small section of the Labour party, infected by Australia and more remotely by the American influences which are often associated with the Industrial Workers of the World movement, may be indifferent to the Imperial connexion, but the obvious fact which confronts the people is that a small population cannot possibly hold New Zealand, unless it has the support of a great sea power. The British connexion is, therefore, essential to the Dominion, and hence follows the fact that New Zealand has been far from enthusiastic at the entrance of the Dominions into the League of Nations. Mr. Massey's reply<sup>2</sup> to the proposal that New Zealand should accept the Geneva protocol of 1924 was couched,

<sup>1</sup> Mr. Bruce (3 Aug. 1926) emphatically repudiated any idea of federation. No Dominion Minister seems ever to have adopted this view for many years past.

<sup>2</sup> *Parl. Pap.*, Cmd. 2458, pp. 13 ff.

or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act ;	Twelve annas.
or to deposit in Court revenue or rent ;	Eight annas.
or for determination by a Court of the amount of compensation to be paid by landlord to his tenant.	Eight annas.

For clauses (c) and (d) in the second column and for the entries in the third column opposite these clauses, the following clauses and entries have been substituted, namely :—

(c) When presented to a Commissioner of Revenue or to any Chief Officer charged with the executive administration of a division, and not otherwise provided for by this Act.	One rupee and eight annas.
(d) When presented to a Chief Controlling Revenue Authority or Executive Authority and not otherwise provided for by this Act.	Two rupees.
(e) When presented to the Court of the Judicial Commissioner—	
(i) otherwise than under section 25 of the Provincial Small Causes Act, 1887, or section 115 of the Code of Civil Procedure, 1908 ;	Two rupees.
(ii) under section 25 of the Provincial Small Causes Act, 1887 ;	Five rupees.
(iii) under sec. 115 of the Code of Civil Procedure, 1908 ;	Five rupees.

**Scope of the Schedule.**—This schedule deals with cases where a fixed fee is prescribed. Schedule I deals with *ad valorem* fees and deals with cases where a money value could be put on the subject-matter while in this schedule the subject-matter is either not

the Germans of South-West Africa supplies an element which is not inclined to the British connexion as ideal. The attitude of the Nationalists during the war became more and more openly one of assertion of the right of secession, and in the deplorable rioting of 1922 the rioters on the Rand were sustained and encouraged by the belief that the Boers would be induced to aid their revolt and to overthrow the Government. The formula which induced the Labour and the Nationalist parties to work together was merely agreement that in the Parliament of 1924 secession would not be made an issue.<sup>1</sup> Further, in 1925-6, the determined effort to bring about reunion of the Dutch was based, on the Nationalist side, without hesitation on the doctrine that the right to secede must remain an essential feature of the policy of the Nationalist party, so that if General Smuts's followers united with them they must definitely cast off their alliance with the former Unionist party which merged itself in the South African party, and abandon their profession of regard for the British connexion. General Hertzog,<sup>2</sup> it is true, has emphatically declared his opinion that secession is not to be thought of unless it came by the will of both elements of the population—unless indeed one element tried to dominate the other—and in the Union the British element cannot dominate the Dutch, but Mr. Tielman Roos has countered this assertion by insisting that the policy of the Nationalists of the Transvaal must remain absolutely unchanged with secession as one of the leading planks. It is, of course, not contemplated that secession should be by force if that can be avoided. But reliance is placed on the famous argument used by Mr. Bonar Law when Leader of the House of Commons on 30 March 1920, when opposing Dominion status for Ireland, that such a status meant inevitably the right to secede. Mr. Bonar Law<sup>3</sup> may have spoken more energetically than he meant to do, and legally there is no doubt that the idea of a simple Union Act assented to by the Crown as giving the right to independence is a chimera, but the broad fact that the United Kingdom would

<sup>1</sup> The Labour party's allegiance was seriously affected in 1926 by Gen. Hertzog's determination to have a national flag in which the Union Jack should have no place.

<sup>2</sup> In the Union Parliament, 28 Apr. 1925; cf. 16 March 1927.

<sup>3</sup> Keith, *War Government of the Dominions*, pp. 166 ff.

**8. Application for restoration of appeal.**—An application for restoration of an appeal dismissed for default in payment of paper book costs is not an application for review either under O. 47, r. 1, C. P. C. or under Art. 4 or 5 of Sch. I of the Court-Fees Act. It is sufficient if it is stamped with a court-fee stamp of Rs. 2 only under Art. 1 (d) of Sch. II. *Nalini Sundari Debya v. Narendra*, 36 C. W. N. 246=1932 Cal. 641. See also *Hari Dassi Debi v. Sajani Mohan Batabayal*, 59 Cal. 1334=138 I. C. 393=36 C. W. N. 564=1932 Cal. 770, where the application was to restore an appeal dismissed for default of payment of initial deposit.

**9. Cross-objections regarding costs.** A memorandum of cross-objections relating to costs only does not fall either within Sch. I Art. 1 or Sch. II Art. 11 or 17 (6) but may be treated as a petition under Art. 1 (d) Sch. II. *Kamal Kamini Devi v. Rangpur North Bengal Bank Ltd.*, 25 C. W. N. 934=1921 Cal. 55. But see under Sch. I, Art. 1.

**10. Petition under Trusts Act.** On petitions under Ss. 34 and 74, Trusts Act, court-fees under Sch. II, Art. 1 (d) are sufficient. *Mahomed Sadiq Ali Khan v. Kazim Ali Khan*, 11 O. W. N. 323=150 I. C. 193=1934 Oudh 118.

### **Applications for which no fee need be paid.**

**1. Memorandum of objections** to a finding submitted by a lower court under O. 41, r. 26, C. P. C. It is not a petition but a mere statement. It does not require any stamp. *Damodar Prasad v. Masudan Singh*, 105 I. C. 108 (Pat.); *Mahomed Salimullah Khan v. Khalil-ur-Rahman Khan*, 54 All. 465=140 I. C. 47=1932 All. 526.

**2. Compromise agreement** need not be separately stamped under the Stamp Act, if it is contained in the application presented to court, which will have to be stamped as any other application. *Ram Saran Lal v. Emperor*, 40 A. 19. See also *Reference under Stamp Act*, 8 M. 15 (F. B.)

**3. Applications for refund of excess court-fee paid nderu mistake.** See *Bhikoo v. Rasth*, 9 W. R. 357. But it has to be noticed that it is not obligatory on the part of the court to order refund. It is only in cases where it remands a suit under s. 13 that the court is bound to refund. Except in those cases it appears that where the excess fee has been paid only by the negligence of the parties there is no justification for the application for refund being exempt from stamp duty. As a matter of fact this question arose in specific instances in the High Court and the Government of Madras has issued the following G. O. exempting the court-fee in the case of refund applications—Notification No. 358 dated 10th September 1921. It runs thus:—

“The existing item 3 will be renumbered as 3 (a) and the following is added in the list of Reductions and Remissions *vide* appendix.”

Dominions for a considerable period after self-government, and were only removed from the Union because of war exigencies. But the experience gained in the case of the Cape and of New Zealand would render it practically impossible for the Imperial Government to provide troops to be governed by an Indian Ministry which controlled relations with bordering States, with the Indian States, and was responsible for the internal peace of India with its perpetual and now renewed feud between Hindus and Mahomedans. That the Indian army could be officered by Indians and brought up to the standard of securing internal order and even perhaps frontier defence may be admitted, but the process has been so far extremely slow. It is probably true that the Indianization of the army has not been popular in British Army circles, but there has been a disappointing lack of readiness of the necessary candidates for the commissions available, no doubt for the reason that men who desire to secure careers for their sons find more remunerative opportunities for them in the Indian Civil Service, in which moreover an Indian has not to face the prejudice against him which he may find in the British army. But the fact remains that self-government without an effective Indian army is an impossibility, and no amount of protests or demonstrations or denunciations of the Imperial Government can avail to alter that fact. Similarly the deplorable recrudescence of sectarian bitterness affords a triumphant weapon to those who have systematically deprecated the reform movement on the score that Indians are only capable of despotic rule, a view which many able and well-meaning men have firmly held. So long, however, as India suffers from these two fatal sources of weakness, so long will independence be absolutely beyond her reach, and even autonomy within the Empire will be postponed. Moreover, the existence of these facts has served to influence disadvantageously Indian interests, for it has been used as an argument against extending self-government even in matters provincial, and has thus delayed the only means of learning how to work responsible government, actual experience of conducting it. As matters stand, Ministers have far too often been merely reduced by Governors to the position of officials, and rational party development has been hampered and delayed.

In Canada the movement for independence has gradually

s. 439 Criminal Procedure Code. The preponderance of judicial authorities seems to be that s. 439 of the Criminal Procedure Code has no application to the case and that the High Court can exercise its revisional powers under s. 115, Civil Procedure Code. See 35 C. W. N. 775=1931 Cal. 604; 34 C. W. N. 914=52 C. L. J. 87; 135 I. C. 513 following 40 C. 477; 38 All. 695; 1926 All. 577; 49 All. 536; 1927 Oudh 14; 1935 Oudh 59; 17 M. L. T. 268=27 I. C. 994; 28 Cr. L. J. 16=99 I. C. 48; 31 M. L. J. 440. The practice in the Calcutta High Court seems to be to entertain such revision petitions on the civil side, under s. 115, Civil Procedure Code, though they would be heard by the Bench taking up criminal work. See 51 C. L. J. 45 following 40 Cal. 477 (F. B.) In Madras also the practice has been to entertain such revision petitions on the civil side under s. 115, Civil Procedure Code see 31 M. L. J. 440. Rule 37 of Criminal Rules of Practice, 1931 is in conformity with this and the recent Full Bench decision in 57 M. 177=65 M. L. J. 873=38 L. W. 940 does not affect the question though it contains some observations that such proceedings are more of a criminal nature. It follows therefore that when the subject-matter of the suit in relation to which the order is passed exceeds Rs. 1,000, a court fee of Rs. 10 and in other cases a court fee of Rs. 5 should be paid on such revision petitions.

### Article 1-A.

Number.	...	Proper fee.
Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of Art. 1 of this Schedule. [One rupee in Bihar and Orissa. One rupee two annas in United Provinces.]

### COMMENTARY.

This article was inserted by Act XIV of 1911.

**Local amendments.**—This article has been amended by the Bihar and Orissa Court Fees Amendment Act I of 1922 and by the United Provinces Act III of 1932, and the additional fee has been raised to Rupee one and Rupee one and annas two respectively, instead of 12 annas as in the main Act.

**Madras.**—Rule 78 of the C. R. P. and C. O. of the High Court of Madras provides as follows "If a record (not falling within the

European Conferences which settled the affairs of Europe in 1814 and 1815 were held, Hanover as a distinct entity was simply ignored, and matters were settled by the King and his British Ministers, in whose determinations Hanover—like the other small German states—had to acquiesce. A Canadian Kingdom would have to be allowed an independent voice of its own, and it is extremely difficult to see how it would in the long run prove convenient to have two kingdoms—still less if other Dominions followed suit—with distinct policies and one king. That a single monarch could under constitutional rule act on the advice of different sets of Ministers seems out of all reasonable possibility.

The advantages which would accrue to Canada by an assertion of absolute independence are not very substantial. Mr. Ewart suggests that it would mean freedom from being involved in British wars in which Canada has no interest and a clearing up of relations as to India, which would be a benefit to the United Kingdom, which is apt to be held responsible for the unsatisfactory treatment of Indians in the Dominions. The first argument is of weight ; the Monroe doctrine does afford Canada protection even if it is rather humiliating to have to rely on a foreign power for aid, and on the whole there is, even under the present system of the League of Nations, greater danger to Canada of being involved in war if she remains in the Empire than if she were an American Republic. Yet it must be conceded that the fact that Canada need not take part actively in any war, unless attacked, does remove much of the difficulty and minimize the disadvantage. Something may be said also for the improved status of an independent power, but it may be conceded that this has been largely changed by the creation of the League of Nations with its distinct recognition of the Dominions and the grant of the right of diplomatic representation at Washington. Nor is it now of importance to enumerate the mistakes of Canadian or British diplomats to prove that the connexion has been of disadvantage ; the past is not a guide for the present, unless it is still vital, and the facts in any case are far from bearing out the contentions of Mr. Ewart. What indeed is clear is that save for the British connexion Canada must long ere this have been merged in the United States, with something of gain no doubt, but probably with more of loss.

**Review application.**—There is an unreported decision of the Madras High Court where Curgenvén, J., has held that an application for review may be filed in *forma pauperis*. See under Sch. I. Arts. 4 and 5.

### Article 4

Plaint or memorandum of appeal in a suit to obtain possession under Act No. XVI of 1838, or the Mamlatdar's Courts Act, 1876.

...

Eight annas [One rupee in the Punjab.]

#### COMMENTARY.

**Amendments.**—The words “the Mamlatdars’ Courts Act 1876” were substituted for the words “Bombay Act No. V of 1864” (to give Mamlatdars’ Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of Law), by the Repealing and Amending Act, 1891 (XII of 1891), General Acts, Vol. IV. This Article is omitted in Madras.

**Mamlatdars’ Courts Act.**—It is Bombay Act III of 1876. But see now the Bombay Mamlatdars’ Courts Act, 1906 (Bom. Act II of 1906).

### Article 5.

Plaint or memorandum of appeal [or of cross-objection—Bihar and Orissa] in a suit to establish or disprove a right of occupancy.

...

Eight annas [One rupee in the Punjab.]

[Twelve annas in the United Provinces.]

#### COMMENTARY.

**Amendments.**—This article has been amended in the Punjab and in the United Provinces for raising the fee, and the amendment has been noted above. In Bihar and Orissa, the Article has been amended so as to be applicable to memo of cross objections also.

**Section 7 (xi).**—That clause provides for suits between landlord and tenant to recover the occupancy of immoveable property from which a tenant has been illegally ejected by the landlord. The present Article applies on the other hand only to a suit or appeal to establish or disprove a right of occupancy. The former section refers only to a suit by the *tenant who has been ejected to recover his holding* while this Article refers to a suit or appeal by a landlord and tenant for the purpose of establishing or disproving a title to occupancy.



foreign matters, so that the Commonwealth may feel that she is securing due regard for her wishes in matters international. Nor does there seem to be the slightest serious movement in Governmental circles to go beyond this position.

In the view of some advocates of Dominion independence the result of the movement would not be mere disruption of the Empire, but rather the creation of a British League of Commonwealths within the League of Nations. The several parts of the Empire would become absolutely independent States, but they would conclude among themselves agreements,<sup>1</sup> which would, of course, be subject to the approval of the League, but which would be assured of that approval, as they would essentially be subservient to the purposes of the League and fall under the same rule as has been applied to the many pacts between members of the League concluded of recent years, such as the French agreements with the succession States. However attractive such a process of development may be in theory, it is far from certain that this will be the line of development. As the Conference of 1926 showed, there is a strong feeling throughout the Empire in favour of elasticity and of avoiding any set arrangements, and it is difficult not to feel that under the present condition of things and the enormous potentialities of Dominion development in wealth and population it would be premature to seek any definite settlement. The illogicalities of the Empire may prove annoying to legal minds,<sup>2</sup> but they are a healthy sign of a capacity of growth to which it is idle to predict any definite bounds.

### § 3. *Practicable Reforms in Dominion Status*

In these circumstances it is clear that there is no room for any wide changes at the moment in the conduct of Dominion affairs. There remain, however, a number of minor matters in which progress could be made without raising any great difficulties. With the progress of the Dominions in political experience it seems desirable, and the Conference of 1926 has

<sup>1</sup> Cf. J. W. Datoe, *The New Era in Canada*, pp. 279-99, for an early and clear expression of this view as against the 'hallucinations' of federalism.

<sup>2</sup> Prof. C. D. Allin's interesting comments (e. g. *Michigan Law Review*, xxiv. 249 ff.) show how chaotic the situation appears to a lawyer familiar with federal constitutions.

*Code of Criminal Procedure, 1882.* Now the Code of 1898. The Article originally stood ending with the words "Code of Civil Procedure" and the succeeding words "1908 and not otherwise provided for by this Act" were added by Act VII of 1914.

**Court-fees and stamp duty.**—The stamp revenue is quite different from the court-fee revenue or judicial receipts and any instrument taxable under the Stamp Act is not thereby exempt from court-fee or *vice versa*. The Court-Fees Act and the Stamp Act are independent of each other. Instruments liable to court-fee are generally exempt from stamp duty. See Section 2 (21), Sch. I Arts. 15 and 24 of the Stamp Act. But there are cases where a dual fee has to be filed. See Sch. I Art. 57 of the Stamp Act. *Kalwanta v. Maha Bir Prasad*, 11 All. 16 (F. B.); *Reference from the Munsif, Habe Ganj*, 53 Cal. 101; but such a dual fee may be exempted by a special provision. See Art. 15 of Schedule I of the Indian Stamp Act. In such cases, only the court-fee need be paid.

**Liability to Court-Fee.**—Article 15 of Sch. I of the Stamp Act excludes bonds provided for in the said Act and bonds liable to court-fee. But bonds under Article 40 or Article 57 of Sch. I of the said Act may be executed in pursuance of an order of a court under the Civil Procedure Code. If so they are chargeable both with the stamp duty and with court-fee. *Reference (1926)*, 53 Cal. 101. The Madras High Court has held that a mortgage deed executed by a Receiver to secure the execution of his office is liable to court-fee and to stamp duty. *Amirthammal v. Ramalinga Goundan*, 43 Mad. 363. It is true that the judgment referred to Article 40 but the court must have meant Article 57. Security bonds given for stay of execution of a decree under Order 41, Rule 5 or 6, and for costs of an appeal under Order 41, Rule 10, are mortgages and are liable both to court-fee and to stamp duty under Art. 40. In the case of a security bond under Order 41, Rule 6, the Oudh Court applied Article 57 instead of Article 40 on the ground that the transaction amounted to a contract between the court and the respondent and the security was for performance of that contract. *Lal Harihar Pratab v. Bisheshar*, 107 I.C. 553. This was erroneous for the court is not a juridical person negotiating contract with parties. The court seems to have overlooked the case of *Reference (1926)* 53 Cal. 101 and the question of liability to court-fee was not even considered. (Extract from Mulla and Pratt's commentaries on the Indian Stamp Act).

**Bail-bond.**—Regarding bail and bail-bonds see chapter XXXIX of the Code of Criminal Procedure. Section 499 of the Code runs as follows :—

"Before any person is released on bail or released on his own bond, a bond for such a sum of money as the police officer or court, as the case may be, thinks sufficient shall be executed by such person and when he is released on bail, by one or more sufficient sureties

If the judicial appeal to the Privy Council is to be preserved without entailing loss of self-respect on the Dominions, it can only be by the merger of the Court in one Court of Appeal for the whole Empire and the admission of Dominion judges to full membership of the Court in lieu of confining them to hearing cases from the Dominions alone.

Arrangements for representation of the Dominions at international conferences and the making of treaties are largely now satisfactory,<sup>1</sup> and efforts are unquestionably made to secure them full information on all foreign issues. The creation of effective departments in all the Dominions to record these communications has been a real step in advance, but something more might be done to secure that the Dominion is represented in London by a minister or officer fully cognizant of Dominion views on foreign issues. The occasional use of the High Commissioner, who may be far too deeply burdened with other business to become expert in foreign affairs, is only a second-rate solution; and there was more force in the offer of the Imperial Government in 1912 than has been regularly recognized. A Minister Resident would serve the functions of an ambassador and, if preferred, a permanent officer for trade and similar duties could be maintained in London. But the essential point is that the representative of any Dominion ought to be a person who is wholly in the confidence of his Government, not a member perhaps of a former Government who has been appointed to the High Commissionership, and who may not be in the slightest sympathy with the Ministry, or who may by reason of his former office be inclined to express personal rather than Governmental views.<sup>2</sup> More effective communications between Dominion Governments themselves seems also to be desirable.

The development of common schemes of defence definitely based on war co-operation is obviously essential. The idea of really independent Dominion navies was never practicable, and is doubtless no longer seriously maintained. It cannot, for instance, be left doubtful whether on a state of war being declared the Australian navy would be handed over to

<sup>1</sup> See Part V, chap. v, § 9.

<sup>2</sup> For the idea of British representatives in the Dominions, see Part VIII, chap. iii, § 8.

tion are granted, a bond has to be executed by the person in whose favour such an order is passed.

**Bond.**—It is defined in s. 2 (5) of the Stamp Act (Act II of 1899). It is mainly an instrument whereby a person obliges himself to pay money to another on condition that the obligation shall be void if a specific act is performed or is not performed as the case may be. Under the old Act I of 1879, there was no saving clause as is found in the later Act or the present Act in Art. 15. The words "or by the Court-Fees Act 1870" were added by the Amending Act III of 1889. The result of the amendment is that where a bond is executed and fee for same is provided for in the Court-Fees Act, no other fee in the shape of stamp duty is leviable thereon. That is where a bond is executed by order of court, the court-fee is leviable under Art. 6 of Sch. II and the document need not bear a non-judicial stamp in addition. It was held in *Kaiwanta v. Maha Bir Prasad*, 11 All. 16 F. B., that where a bond is given under the orders of a court as security by one party for the sake of another, it is subject to two duties (a) an *ad valorem* stamp under the Stamp Act, Art. 15, Sch. I and (b) a Court-fee of eight annas under the Court-Fees Act Art. 6, Sch. II. Their Lordships relied on the analogy of an administration bond under the Stamp Act and also under the Court-Fees Act. But this decision cannot be correct in view of the saving clause in Art. 15 of the Stamp Act.

**Given in pursuance of the order of court.**—Is a bond executed by a party where a relief is granted by court conditional on his executing a bond, one *given in pursuance of the order of court* in view of the fact that the party is given the option of executing a bond. He has to do so only if he *chose* to have that relief on that condition. In *Gurandita Mal v. The Firm Guru Das Mal Ram Chand*, 7 Lah. L. J. 343 = 1925 Lah. 552, it was held that a security bond taken on an order for stay of execution must be stamped in accordance with the Stamp Act and cannot be written on plain paper bearing a court fee of eight annas. Martineau, J., observed thus, "The fallacy lies in supposing that the giving of the security bond is ordered by the court. The judgment-debtor is not obliged to furnish security, but he may, or may not furnish it, as he pleases so that the effect of O. 21, r. 26 (3), C. P. C. is that the court may before making an order for staying execution require security from the judgment-debtor and pass a conditional order. I cannot agree that the bond was written in pursuance of an order of court, for the court could not compel the judgment-debtor to furnish the security but it was optional with him to furnish it or not as he pleased. What the court has ordered was that execution should be stayed and the furnishing of security was really not part of its order but was the condition which it attached to the order." And following the decision in *Dwaraka Nath v. Sailaja Kanta*, 43 I. C. 376, it was held that the bond was not properly stamped. But see *Muhammad Ewas v. Haji Muhammad Ali*, 1929 Lah. 205 where the decision in 1925 Lah. 552 was

## II

### IMPERIAL CO-OPERATION

#### § 1. *The Colonial Conference of 1887*

THE outcome of the Imperial Federation movement in the period after 1883 was the decision of the Imperial Government to summon a Conference representative of the whole Empire, including the Crown Colonies, in 1887.<sup>1</sup> The constitutional issue of federation was indeed definitely ruled out, for the obvious reason that it had no official support in any colony ; it was made clear by Mr. Stanhope in the invitation of 25 November 1886 that there was no question of a formal meeting of plenipotentiaries, but rather a gathering of leading men from the Colonies to consider such issues as that of military defence, brought to a point by the eagerness of the Colonies to afford aid in Egypt, and the forging of closer economic links by improvement of communications. The Conference was, therefore, a rather mixed gathering of notables ; it was formally opened in the presence of the Prime Minister and other Ministers, and many interesting matters were debated. It reached positive results in regard to the defence of Table Bay, and the fortification of Simon's Town at Imperial expense ; the arrangement for an Australasian squadron with contributions of £126,000 from the Colonies ; the continuation for a period of neutrality under an Anglo-French Naval Commission in the New Hebrides, and the annexation of New Guinea, which was effected in 1888. It was, however, not found possible to arrange for the defence of King George's Sound or Torres Straits. Mr. Hofmeyr for the Cape made an important suggestion that, in order to encourage Empire trade and promote defence, a duty should be levied throughout the Empire on foreign goods, the proceeds to be devoted to defence.

Trade questions discussed included the desirability of uniformity of laws as to merchandise marks and patents ; the effect of foreign bounties on the sugar-producing colonies ;<sup>2</sup> the ideal of Imperial penny postage—which the Colonies did

<sup>1</sup> *Parl. Pap.*, C. 5091, 5091 I.

<sup>2</sup> Later dealt with, Cd. 1470, 1535, 1632 (1903).

observe as follows : " This decision is undoubtedly correct. This case rules that bonds given under the Civil Procedure Code are chargeable with court-fee only if they fall under Art. 15 ; but are chargeable with court-fee and stamp duty if they fall under Art. 40 or Art. 57. Many bonds called security bonds under the Civil Procedure Code are not security bonds under Art. 57 as they do not secure the execution of an office or the performance of a contract. Thus simple bonds executed for appearance under O. 38, r. 2, or for the production of property under O. 38, r. 5 or by a next friend for minor's property under O. 32, r. 6 (2), are not security bonds under Art. 57 and would be liable only to court-fee. But a security bond by a Receiver under O. 40, r. 3 would be liable to court-fee and to stamp duty under Art. 57. Security bonds given for stay of execution of a decree under O. 41, r. 5 or 6, or for costs of appeal under O. 41, r. 10 are mortgages and are liable to court-fee and to stamp duty under Art. 40." See also *Sarbo Mussulmani v. Safar Mandal*, 49 C. 997=1923 Cal. 269. See also the recent Full Bench of decision of the Madras High Court in *Pitchamma v. Pedamunayya*, 68 M. L. J. 466=41 L. W. 482 (F.B.) holding that the acceptance by a court of a bond previously furnished is equivalent to an order of court followed by compliance with it. A bond executed by a surety in pursuance of an order under s. 55 (4), C. P. C., holding himself responsible for the debtor filing an insolvency petition within a month and for appearing in any proceeding whenever called upon, and undertaking to pay the decree amount if the judgment-debtor fails to comply with any of these conditions need only be stamped with a court fee stamp of annas eight under this Article. As it imposes only a personal obligation and does not hypothecate any immoveable property, Art. 40 of Sch. I of the Stamp Act has no application to it and Art. 57 is equally inapplicable to the case as the bond was not executed for any of the purposes mentioned in that Article. *Ghulam Mahomed v. Emperor*, 14 Lah. 284=141 I. C. 301=1933 Lah. 89 (S. B.); *Jowala Mal v. Gian Chand*, 143 I. C. 12 (Lah.).

**Bond creating a mortgage or charge on immoveable property.**—Where a bond given in pursuance of an order of court within the meaning of this Article is not simply a bond but also creates a charge or mortgage on immoveable property set out in the bond then clearly stamp fee is payable as on a mortgage bond. The above quoted decision *Reference from the Munsif of Habi Ganji*, 53 C. 101, is also authority for this position. See also *Kalwanta v. Maha Bir Prasad*, 11 A. 16. In Madras there was a lack of uniformity in practice in the matter of the collection of the stamp duty the same having been indiscriminately calculated as laid down in Art. 40 or 57 of the Indian Stamp Act. Hence the following circular was issued by the High Court of Madras. It was issued to clearly state the proper procedure to be followed in cases where the bond executed to Court creates also a mortgage. The circular runs as follows :—

the Colonies giving preferential treatment to the United Kingdom if they desired, and possibly also to other colonies. The attitude of Lord Ripon in his replies of 28 June 1895 to all these views was negative, save that he agreed to secure legislation, which was later carried, to free the Australian colonies from difficulties under the Act of 1873 as to reciprocity agreements with other colonies, on the understanding that any Bills of this kind should be reserved. The treaties, he argued, applied only to preference granted to the United Kingdom, and it would be unwise to denounce them in view of the injury to British trade which might result.

The Conference agreed on the desirability of having rapid services on the Atlantic, and from Vancouver to Sydney, and to the making of a Pacific cable with, if possible, a neutral landing place in Hawaii, but this plan was spoilt by the annexation of those islands by the United States, but the cable was successfully laid ultimately from Auckland to Vancouver via Norfolk Island, for Australia, Fiji, and Fanning Island.

### § 3. *The Colonial Conference of 1897*

The next Conference<sup>1</sup> was formally summoned by the Imperial Government in connexion with the sixtieth anniversary of Queen Victoria's coronation; it was attended by the Prime Ministers of all the self-governing colonies, Canada, the six Australian colonies, New Zealand, the Cape and Natal, and Newfoundland. The relations of the Colonies and the Empire were now formally reviewed, and held for the time being satisfactory, though Mr. Seddon for New Zealand and Sir E. Braddon for Tasmania desired more formal arrangements in order to secure the Colonies a due share in Imperial interests. But it was admitted that a voice in decision meant a share in the cost of carrying out decisions, and this the Colonies were not prepared to consider. They desired, however, the continuance of the system of Conferences. Approval was expressed of the political federation of contiguous colonies, an allusion to the Australian federation then approaching completion.

Foreign relations were touched on mainly from the point of view of commerce. The request of 1894 for the termination of the Belgian and German treaties was repeated, and, as it was

<sup>1</sup> *Parl. Pap.*, C. 8596.

old s. 269, but it does not reproduce the provision requiring the officer attaching the property to act in accordance with the rules notwithstanding they may be inconsistent with the provisions of the section. Section 157 of the Code of 1908 keeps alive the rules, etc., made under the old Code so far as they are consistent with the Code of 1908. There is nothing in the Code of 1908 as distinguished from the orders in the first schedule to the Code, which is inconsistent with the rules issued under s. 269, though there is an inconsistency between the rules and O. 21, r. 43. But the High Court has power to alter the rules in the first schedule. This being so, I do not think it follows that, because the rules made under the old section are inconsistent with the rules in the schedule, they are not consistent with this Code within the meaning of s. 157. The point is not free from doubt, but until rules are made by the High Court, I think the rules made by Government under s. 269 of the old Code are in force. Section 157 is an enabling section and not a repealing one. The rules have never been expressly repealed and I do not think we are bound to hold they are implicitly repealed by virtue of the words 'so far as they are consistent with this Code', which occur in s. 157. As regards the question raised in the letter of reference, as the bond is given in pursuance of a rule made under power conferred by a section of the Code, I think the bond may be said to be given in pursuance of an order made by a Court under a section of the Code of Civil Procedure, that consequently, the bond is 'otherwise provided for by the Court-Fees Act' (see Sch. II, Art. 6, Court-Fees Act, 1870 and Sch. I, Art. 15 of the Indian Stamp Act, 1899), and that the stamp is an eight annas stamp under the Court-Fees Act."

#### **Bond for protection of attached moveable property.—**

In Madras see the Madras High Court's amendments to Sch. I, C. P. C. and the Madras Rules 43, 43-A and 43-B of O. 21, C. P. C. as also the rules set out in C. R. P. and C. O.

In *Sarbo Mussalmani v. Safar Mandal*, 49 C. 997=1923 Cal. 369=68 I. C. 730, it was held that a bond executed by a claimant to produce certain attached goats when required by court should be stamped with a court-fee under Art. 6. See also *Reference under the Court-Fees Act, re The District Munsif of Tiruvallur*, 37 M. 17=20 I. C. 775.

#### **Security for costs in appeals to the Privy Council.—**

Now security is taken by virtue of the provisions of the Code of Civil Procedure O. 45, r. 7 and any bond that is executed is to bear a court-fee under this Article. The earlier decisions to the contrary based on the fact that such security was then taken under the rules framed by the Privy Council itself and hence could not come within the strict letter of Art. 6 are no longer good law.

#### **Security bonds executed in favour of village courts.—**

A security bond was taken by a Village Court under s. 53 of the Village Courts Act (I of 1889). The question was what stamp this



ences should be held not less often than one in four years, to be attended by the Secretary of State for the Colonies and the Prime Ministers of the self-governing Colonies ; extraordinary meetings might be summoned, the next regular Conference to be held not sooner than three years after. It was agreed that, before commercial treaties were negotiated, the view of the Colonies should, if possible, be obtained. Defence discussions resulted in the increase of the Australasian subsidies to the squadron to £200,000 for Australia and £40,000 for New Zealand, in return for an improved squadron and the formation of a branch of the Royal Navy Reserve ; the Cape and Natal increased their grants to £50,000 and £35,000 for the general maintenance of the navy ; Newfoundland consented to contribute £3,000 a year and a capital sum of £1,800 to fit up a drill ship in connexion with the establishment of a branch of the Royal Naval Reserve of 600 men. Greater facilities for the grant of commissions and naval cadetships to young colonials were conceded. As regards trade the Colonies agreed that they should give preferences to the United Kingdom, Canada promising to increase her general preference of 33½ per cent., New Zealand to give 10 per cent., the Cape and Natal 25 per cent., and Australia an undefined amount, promises implemented in substance in due course,<sup>1</sup> while the United Kingdom was urged to accord preference, a resolution which brought about the introduction of the issue into British political life by its acceptance by Mr. Chamberlain and his ultimate resignation from the Government in order to press it on the people. In Mr. Chamberlain's hands, however, the proposal took a turn which the Colonies declined to accept, that of the calling a halt in the development of new colonial industries, without which Mr. Chamberlain held that colonial preference could not be effectively accorded. The principle of Imperial preference in governmental contracts was approved, and attention was called to the desirability of closing the coasting trade—including in that term inter-imperial trade—to the vessels of powers which reserved their own coasting trade ; and to the importance of furthering British shipping. Minor matters were uniformity in weights and measures, patents, right of purchasing privately-

<sup>1</sup> *Parl. Pap.*, Cd. 2326 ; H. C. 310, 1903 (Canada) ; Cd. 1599, 1640 (1903) ; 2024 (1904) ; 2977 (1906) ; 3524, pp. 317 ff.

In the notification of the Government of India (*sec* reductions and remissions of the Government of India, Appendix 7), there is a remission of the "fees chargeable" on security bonds for the keeping of the peace by or good behaviour of persons other than the executants. The combined effect of these two provisions is that almost all bail bonds executed in criminal cases are exempt from court-fee and being "otherwise provided for in the Court-Fees Act" within the meaning of Art. 15 of the Stamp Act, such bonds are also exempt from stamp duty.

**Indemnity bond.**—The stamp fee for this is provided for in Art. 34, Schedule I of the Stamp Act. There is no reservation here as in Art. 15 of the Act.

**Execution of bonds.**—Obviously the documents could not be taken in the name of the court for as has been laid down by their Lordships of the Privy Council in *Raj Rajbir Singh v. Jai Indra Bahadur Singh*, 42 All. 158=46 I. A. 228=38 M. L. J. 362=55 I. C. 550, "A court is not a judicial person. It cannot take property and consequently could not assign it." Hence a bond should be taken only in the name of an officer or the presiding judge of a court. *Vide* Form No. 3 Appendix G of the Civil Procedure Code of 1908. The Form shows that it is intended to be given to someone and not a mere undertaking to the court. Whether that some one be the other party or the officer of the court is not made clear. With regard to indemnity bonds, it is but proper that they should be executed in favour of the other party *vide* for instance Form 6, Appendix III-D, Part II, Vol. II of the C.R.P. and C. O. at Madras in cases where one party gives an indemnity to the opposite party in a partition suit. Similarly where a decree is passed on a lost negotiable instrument and indemnity is taken under O. VII, r. 16, C. P. C, the bond has to be executed in favour of the opposite party, though a practice to the contrary prevails in the original side of the High Court of Madras where indemnity bonds are taken in the name of the Registrar.

**Enforcement of the bonds.**—As regards the enforcement of the bail bonds, see the Code of Criminal Procedure. The security and indemnity bonds executed to Civil Courts are on the breach of the conditions therein specified assigned over to the party for whose benefit they were taken and the terms thereof are enforced by them.

Sometimes the practice leads to difficulties. The following case arose in the District of Madura in the Presidency of Madras. A party executed a security bond in favour of the presiding judge of the District Munsif's Court and mortgaged his properties. But the properties were subject to an earlier undischarged encumbrance. The prior encumbrancer filed a suit on his mortgage and impleaded the judge of the court as the puisne encumbrancer. This happened before the court could assign the security bond in favour of the

§ 6. *The Colonial Conference of 1907*

Before the Conference of 1907 met the Canadian Government had pointed out that it would be convenient if other Ministers than the Prime Minister were made members, adducing the fact that in 1902 Australian and Canadian Ministers had actually taken part in the proceedings.<sup>1</sup> The Secretary of State, while leaving the issue to the Conference, concurred in the convenience of the proposal, and such Ministers did actually attend, it being agreed that any voting must be by colonies. The Conference differed from its predecessors in having no ceremonial connexion, and in publishing by far the greater part of its papers.<sup>2</sup> It was agreed to rename the Conference as Imperial Conference; that it should be constituted of the Prime Ministers of the United Kingdom and the Dominions, India being left out, that the Secretary of State for the Colonies should be a member *ex officio*, and preside in the absence of the Imperial Prime Minister; that other Ministers might attend, but any discussion save by agreement should be confined to two, and each Government should have but one vote. In case of matters which would not be postponed to the regular Conference, or were of minor importance, or required detailed consideration, subsidiary Conferences could be summoned. A permanent secretarial staff was to be established in the Colonial Office to prepare matters for the Conference, attend to its resolutions, and conduct correspondence, a characteristically feeble device<sup>3</sup> to meet the more radical suggestion of Mr. Deakin for a composite and truly Imperial secretariat.

The chief constitutional issue discussed was the establishment of an Imperial Court of Appeal to merge the House of Lords and the Judicial Committee, which the Imperial Government negatived. It was agreed, however, to consolidate and simplify the existing rules as to appeals, and to secure uniformity as far as possible, while it was also agreed to delegate to Colonial Courts the right of allowing appeals by special leave. General Botha also obtained approval of a very far-reaching decision that, when colonies were federated or united, and there was one final

<sup>1</sup> *Parl. Pap.*, Cd. 3340.

<sup>2</sup> *Parl. Pap.*, Cd. 3523, 3524.

<sup>3</sup> See *Parl. Pap.*, Cd. 3795; Cd. 5273, pp. 1-12. Admittedly the thing was a futile farce, no change in substance being made.

## Article 10.

Mukhtarnama or Vakalatnama [or any paper signed by an Advocate signifying or intimating that he is retained for a party—Mad.]	When presented for the conduct of any one case—	
	(a) to any Civil or Criminal Court other than a High Court, or to any Revenue Court or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (b) and (c) of this number.	Eight annas. [One rupee in Bengal, Bihar and Orissa, Madras and the Punjab] [Twelve annas in United Provinces and Central Provinces.]
	(b) to Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a division, not being the Chief Revenue or Executive Authority.	One rupee. [One rupee eight annas in Bengal, Madras and United Provinces. Two rupees in Bihar and Orissa.]
	(c) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees. [Three rupees in Bihar and Orissa, Madras and United Provinces]. [Two rupees and eight annas in Central Provinces.]

## COMMENTARY.

**Amendment.**—This Article has been amended in Bengal, Bihar and Orissa, Central Provinces, Madras, the Punjab, and the United Provinces, the only change being the enhancement of the fees leviable except in Madras where the Article is made to include memorandum of appearance.

**Memorandum of appearance.**—It is doubtful whether a memorandum of appearance should bear a court fee stamp of Rs. 2 as it contains an authority to plead although the authority is filed by the pleader himself. *Raj Kumar Pal v. Janab Ali Mian*, 35 C.W.N. 1100—59 Cal. 370. But in Madras memorandum of appearance also is included in the Article as being chargeable to court-fee.

**Vakalatnama.**—Is a document or power of attorney executed in favour of a pleader. Vide O. 3, r. 4, C. P. C. “The appointment of a pleader to make or do any appearance application or act for any person shall be in writing and shall be signed by such person” or by his agents. Every such appointment shall be accepted by the pleader.

**Pleader.**—The word is defined in the Code of Civil Procedure s. 2 (15) as follows:—“Pleader means any person entitled to appear and plead for another in court and includes an advocate or vakil and an attorney of the High Court.”

was disposed of by another subsidiary Conference which paved the way for the acceptance by the Empire of the Berne Convention of 1908 and the *Copyright Act*, 1911.<sup>1</sup> Questions as to surveyors were discussed at a technical Conference in 1911. There was wholesale assimilation of the terms of appeals to the Privy Council from the Australian States, the Canadian Provinces other than Ontario and Quebec, New Zealand, and Orders as to procedure only were issued in respect of the Commonwealth and the Union of South Africa. Something was done to assimilate laws as to patents, trade-marks, and companies. Trade Commissioners were appointed to the Dominions, in order to perform functions in the way of promoting British trade similar to those of Consuls in foreign countries. Dominion trade statistics were improved in order to discriminate the countries of import. The Commonwealth was allowed to have its own silver currency, a reduction was secured of fifty centimes a ton in the Suez Canal dues, the four great Dominions adhered to the Radiotelegraphic Convention of 1906, and a bill was prepared to facilitate the marriage in England of persons arriving from the Dominions.

<sup>1</sup> Part V, chap. viii; *Parl. Pap.*, Cd. 5272.

vakalats filed in the original side of the High Court and the Presidency Court of Small Causes from payment of stamp duty or insist on such documents being stamped. Another course that may be adopted to secure uniformity of practice, instead of having some vakalats stamped with general stamps and others with court-fee stamps, is for the High Court to frame rules under the Letters Patent levying court-fee on vakalats. Even then the position is not quite clear as it is still open to doubt whether such rules could be construed to be "law relating to court-fees for the time being in force" as set out in s. 3 (21) of the Stamp Act. If that is not so construed then such vakalats may be liable both for court-fees and for stamp duty. This is the position as regards vakalats filed on the original side of the High Court. Regarding vakalats filed in the Presidency Court of Small Causes, the Court-Fees Act not being applicable to same, it is doubtful whether government can levy court-fee on vakalats under the provision of s. 71 of the Presidency Small Cause Courts Act (Act XV of 1882). In any case it appears necessary that the practice should be in conformity with the law.

**Recognised Agents.**—O. III, r. 2, C. P. C. defines what recognised agents are. They are :—

(a) persons *holding powers of attorney*, authorising them to make and do such appearances, applications and acts on behalf of such parties ;

(b) persons carrying on trade or business for and in the name of parties, etc.

**Mukhtarnama executed in favour of persons who are not certified practitioners.**—Though there is no difference in the case of the construction of Vakalatnamas which are executed in favour of legal practitioners, there is a want of unanimity in the view taken about a Mukhtarnama. The view taken in *Permanand v. Sat Prasad*, 33 All. 487 F. B. is that a document purporting to authorise the person in whose favour it was executed, who was not a certified mukhtar or pleader to appear and do all acts necessary for the execution of a decree of a court requires to be stamped as a power of attorney with a one rupee stamp and not as a Vakalatnama or Mukhtarnama. Their Lordships observed as follows :—

"The donee of the power is not a certified mukhtar or pleader, and the question is whether under these circumstances the document is duly stamped. S. 2, clause (21) of the Stamp Act defines the expression "power of attorney" in the following terms :—"A power of attorney includes any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act for and in the name of the person executing it." The present document, as we shall presently show, clearly falls within this definition. Article 48 of Schedule I of the Stamp Act provides for the stamp on a power of attorney falling within the definition

ment on Imperial issues, and for the division of the Colonial Office into a Dominions and a Crown Colonies Department under a Secretary of State for Imperial Affairs, the High Commissioners to take the place of the Governors as means of communication between the Imperial and Dominion Governments. On 23 September 1910 in the House of Representatives Mr. Herries argued in favour of Parliamentary discussions of agenda before any delegation went, on the score that the representatives of New Zealand would thus carry much greater weight at the Conference, and on 23 November Mr. Taylor sounded a note of warning lest the Conference seek to interfere in the internal affairs of New Zealand. Sir J. Ward insisted on the first occasion that the Government must express its opinion at the Conference subject always to the necessity of submitting to Parliament for approval any resolution arrived at, while he assured Mr. Taylor that the Conference would be quite firmly told that it must not interfere in Dominion internal affairs. Newfoundland suggested an Atlantic steamship service, as a link in the All-Red Route.

The Conference met from 23 May to 20 June; thirteen ministers attended, the British Prime Minister presiding on most occasions, and Sir W. Laurier on one; no other Imperial ministers than the Colonial Secretary were present save on occasions when matters affecting their departments were considered. The proceedings were secret, Sir J. Ward's proposal to the opposite effect being negatived, but a very full disclosure was made in July.<sup>1</sup>

(b) *The Resolutions of the Conference*

The many resolutions achieved may be summarized thus:

(i) *Constitutional Questions.* Sir J. Ward's proposal<sup>2</sup> for an Imperial Council was presented by him in the quite changed form of a proposal for an Imperial Parliament charged with the issues of war and peace, foreign policy, and treaties affecting the

<sup>1</sup> *Parl. Pap.*, Cd. 5745, 5746-1, 5746-2.

<sup>2</sup> Sir W. Laurier's sneer (Skelton, ii. 342 n.) at Sir J. Ward had better have been left in oblivion. But since it has been made public the writer must confess that his presence as Assistant Secretary at the Conference convinced him of the vanity of attributing statesmanship to politicians of high repute, and played a decisive part in his decision in 1914 to accept an office which, though conferred by the Crown, affords complete liberty of action.

must be a legal practitioner because a Vakil usually is a legal practitioner. Moreover many persons described as Vakils who are agents of Native States are not legal practitioners."

**Scope of Vakalatnama.**—A Vakalatnama authorising a pleader to receive during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit or in consequence of the order or decree of the court does not require a stamp under the Stamp Act. It was observed as follows: "The receipt of money or documents under such circumstances is one of those ordinary duties which pleaders are continually called upon to perform for their clients and a Vakalatnama properly framed generally contains a power to perform such duties. If therefore the legislature had intended that in every such case a general or special power of attorney should be necessary to enable the pleader to receive the money or the documents it may be assumed that it would have said so in express terms." *Anonymous*, 3 Cal. 767.

**"Conduct of a case"**.—It includes an application for copies (*Reference* 9 M. 146) and receipt of money and documents (*Anonymous* 3 C. 767).

**Vakalats in civil suits.**—The Civil Procedure Code Amendment Act XXII of 1926 s. 2 (b) has re-enacted O. 3, r. 4, C. P. C. so that all practitioners including Advocates are now required to file vakalats unlike the procedure that was followed under the older rule by which Advocates were exempted. Now rule 4 (1) lays down that "No pleader shall *act* for any person in any court, unless he has been appointed for the purpose by such person by a document in writing signed by such person, etc., making such appointment." The definition of a 'pleader' is found in s. 2 (15) of the Code and means any person entitled to appear and plead for another in court and includes an Advocate a Vakil or an attorney of the court." Therefore Advocates too have now to file a vakalat. Of course it may be noted that without a vakalat they could only not *act*. Regarding 'pleading' provision is made in O. 3, r. 4, cl. (5) which lays down that "No pleader who has been engaged for the purpose of *pleading only* shall plead on behalf of any party, unless he has filed in court a *memorandum of appearance* signed by himself, etc."

**Vakalats in criminal cases.**—Section 340 of the Code of Criminal Procedure enacts that any person accused of an offence before a criminal court or against whom proceedings are instituted under this Code in any such court may of right be defended by a pleader. The right to be defended by a pleader applies to appeal also. The Criminal Procedure Code unlike the Code of Civil Procedure nowhere prescribes the mode of appointment of pleaders and there is no authority for the proposition that in criminal cases a pleader must file an authority from his client in order to enable him to present an application or appeal on behalf of his client and to act for him in criminal cases. Art. 10 of Sch. II of the Court-Fees Act prescribes a



to hold an Imperial Conference in a Dominion, though Sir J. Ward and General Botha stressed the disadvantage which would arise of the Dominion minister missing the opportunity of forming acquaintance with Imperial ministers.

The discussion of an Imperial Court of Appeal had no result of importance. The Commonwealth desired a single Court to include the functions of the House of Lords. The Imperial Government would not concede this, insisting instead that the two Courts, the Lords and the Privy Council, never really gave different judgements on points of principle; that both were strongly manned; that the Government was willing to add two further paid members to both, to fix the quorum at five in lieu of three, and to constitute the Privy Council in Dominion appeals as each Dominion wished. But New Zealand alone was anxious to send a judge to England to sit on the Council, as was possible under an Act of 1908; the Commonwealth view was that all appeals should be decided locally, and in any case it was not worth sending a judge; the Union had hardly any appeals, Canada held the matter affected the provinces deeply and should be left alone, and Newfoundland wished no change. All that was agreed was that the Privy Council should in future not give a single judgement, but individual members might express dissent, but later this proposal was unanimously repented of in the Dominions, where reflection showed that the value of the judgement was often simply due to its being by one voice.

Naturalization resulted in a most important agreement after the Dominion representatives had vainly sought to induce the Imperial Government to accept colonial naturalization as having Imperial validity. It was agreed to create a form of naturalization based on the Imperial rule of five years' residence, which would be accepted throughout the Empire, leaving local naturalization on easier terms unaffected. It was also agreed that the Dominion powers as to immigration and as to treating differentially classes of British subjects should remain unimpaired.

(ii) *Foreign Relations.* The great achievement of the Conference was reached on the issue of the Declaration of London, when it was agreed that in future instructions to British delegates to Peace Conferences should be drafted in communi-

**Municipal Cases.**—A further exemption was made in the case of Municipal prosecutions.

Item 23 of Notification No. 358 dated 10th September 1921—runs thus :

“(f) to remit the fee chargeable under Art. 10 of Sch. II of the Madras Court-Fees Act, 1922 (Madras Act V of 1922) in respect of a Vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to any criminal court for the conduct of any prosecution on behalf of a Municipal Council to which the Madras District Municipalities Act 1920, (Madras Act V of 1920), applies or on behalf of the Corporation of Madras or a Local Board to which the Madras Local Boards Act, 1920 (Madras Act XIV of 1920) applies.”

(B. P. R. No. 59 *Mis. 19th Februray 1927*).

The result of these several notifications is that in Madras court-fee is payable on vakalats or memoranda of appearance of Vakils and Advocates filed on behalf of the complainant (except in Municipal prosecutions in Madras) and no fee is payable on such documents where the appearance is on behalf of the accused.

**Vakalats in consolidated suits and appeals.**—Where suits were ordered to be consolidated the question arose whether a single vakalat would suffice in all of them or whether separate vakalats should be filed in each of them. In *In re Perumai Nadar*, 54 M.L.J. 595 = 109 I. C. 651, where it was sought to consolidate 38 Second Appeals into one batch and 52 into another batch for the purpose of filing one vakalatnama in each of the batches, it was held (Devadoss, J.) that only one Vakalatnama in each batch need be filed. The learned Judge was of opinion that the very object of consolidation was to save the party unnecessary expense and the court unnecessary trouble, that where the court allows consolidation it allows the parties to the appeals to treat the consolidated appeals as one and that Art. 10 of Sch. II to the Court-Fees Act does not stand in the way of consolidation. Dealing with the argument based on O. 41, r. 1 which requires a separate memorandum of appeal, the learned Judge was of opinion that it does not follow that because a separate memorandum ought to be filed in each case the engagement of the pleader should be separate. He however held that the production of one Vakalatnama in different cases does not at all obviate the necessity of producing the decree in each case though the court may dispense with the production of copies of judgments in each case. But this decision has been over-ruled by the decision in *In re Maharaja of Venkatagiri*, 53 Mad. 248 (F.B.) The plaintiff filed 118 suits against 118 sets of tenants for recovery of arrears of rent under s. 77 of the Estates Land Act. The suits were dismissed and he filed 118 appeals from those decrees. The appeals also were dismissed. He then sought to prefer second appeals to the High Court from the decrees, of the lower appellate

for excluding mere temporary visits, and none for imposing disabilities on Indians lawfully resident in the Dominions on the score of race or colour. He stressed the religious and intellectual greatness of India, her glorious traditions and her unswerving loyalty to the Crown. None of the Dominion Premiers sought to answer the arguments, but they insisted on the economic impossibility of competing with Indian labour; Sir W. Laurier did not like differentiations, but, if Indians had no vote in British Columbia, neither had women in England; Mr. Malan, for South Africa, pointed out that the racial question was made complex by the presence of Indians. No solution was achieved, but it was made clear that the New Zealand effort to exclude lascars from the trade with Australia would not succeed, while Australia was legally at liberty to impose what conditions she pleased on her coasting trade.

(iv) *Naval and Military Defence.* In the closest connexion with defence questions there took place at the Committee of Imperial Defence a full discussion of foreign relations in their relation to British defence preparations, the Dominion Prime Ministers receiving full information regarding the German menace to European peace, which in the isolation of distance they had hardly realized.<sup>1</sup> Otherwise little progress was made as to defence in its military aspect, the Conferences of 1907 and 1909 having left no new matters of principle to be raised. On the other hand, the status of Dominion navies was for the first time properly explored, and the way made ready for the *Naval Discipline (Dominion Naval Forces) Act* of 1911. The Conference refrained from any discussion of General Botha's suggestion that from any naval subsidy there should be deducted the amount of local expenditure on naval defence preparations. The proposal was in fact dictated mainly by the Boer dislike of the small naval contribution of £85,000 a year, and the matter was clearly negligible, had not it originally been coupled with the distressing proposal to abandon the British preference in exchange for expenditure on naval and military defence. Such a principle applied generally would have meant nothing but loss to the British Government, which was unfeignedly glad

<sup>1</sup> The proceedings being secret their effect was lost in large measure, as the Dominion Premiers failed to realize the need of educating their people in the duty of readiness for war. The same defect remains unremedied in 1927.

		[In United Provinces —when presented to a Commissioner of the division,—Two rupees ; to a High Court or to a Chief Controlling Executive or Revenue Authority— Three rupees.]
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## COMMENTARY.

**Amendment.**—The words “from an order rejecting a plaint or” were omitted by s. 155 (Sch. IV) of the Code of Civil Procedure, 1908.

**Local amendments.**—This Article has been amended in Bengal, Bihar and Orissa, Central Provinces, Madras, the Punjab and the United Provinces.

**The Madras amendment.**—The original Article applied to all appeals which were not from decrees or orders having the force of a decree. Instead of that, the Madras Amendment Act has introduced an amendment which has clearly and definitely restricted the scope of the Article. Instead of generalising the exceptions, the scope of the Article is positively and definitely stated.

**Decree: Order.**—For the definition of the words see s. 2 (2) and (14) Civil Procedure Code.

It is provided in the definition of a ‘decree’ that ‘it shall be deemed to include the rejection of a plaint and the determination of any question within s. 47 or s. 144’. Consequently the provision in the Code that provided for appeals from orders passed under ss. 47 and 144 are now deleted as redundant, and appeals lie from such orders as they are deemed to be decrees. The effect of this amendment on Article 11 of the Court-Fees Act is that appeals from orders under ss. 47 and 144 Civil Procedure Code are excluded “as decrees” and become liable to pay *ad valorem* duty under Schedule I Article 1. But this was sought to be removed by the Governor-General issuing a notification (*vide* Reductions and Remissions in the Appendix) to the effect that the fee payable on appeals from orders under s. 47 Civil Procedure Code should require court-fee only under this Article and not under Sch. I, Art. 1 as they would otherwise be. But s. 144 Civil Procedure Code is not mentioned in the notification. The effect is that appeals against orders under s. 144 may not come under Art 11 unless the view is taken that applications under s. 144 C. P. C. should be deemed to be applications relating to execution and consequently coming under - 47 Civil Procedure Code.

It was held by the Allahabad High Court in *Baij Nath v. Iqbal Mukhand*, 47 All. 98=82 I. C. 322=1924 All. 137 that *ad*

opinion was divided. South Africa held they did, and insisted on penalizing companies giving deferred rebates by denying them mail contracts and charging higher dues; Sir J. Ward admitted that rebates were necessary to secure a regular refrigeration service to the Dominion; Mr. Brodeur complained that an insurance combine penalized Canadian ports for the benefit of United States ports, while Mr. Buxton admitted that there was grave doubt in the United Kingdom of the advisability of putting into effect even the moderate proposals of the recent Royal Commission on Shipping Conferences. The Imperial Government met Australia by agreeing to use its best influence to reduce Suez Canal dues, making it clear that it placed Imperial interests above its profits as shareholder in the Company. Concerted action as to participation in international exhibitions was agreed on. The Australian suggestion of the adoption of the decimal system of coinage, weights, and measures, was regarded with indifference or dislike by the rest of the Conference, and the suggestion of the interchangeability of silver coinage was negatived by the Imperial Government as only possible if the Dominions were content to give up the profits on silver coin. There was agreement on the desirability of uniformity of law as to patents, trade-marks, and companies, and accident compensation was generally approved, but not as regards South Africa; satisfaction was expressed at the outcome of the Copyright Conference of 1910.

(vii) *Legal Questions.* The Dominions consented to the very natural request of the Imperial Government that, when deporting aliens, e.g. from Canada or South Africa, due notice should be given to it, so that it might be able to apply to such aliens the provisions of its Aliens Act, and save itself from being burdened with criminals from the Dominions. The question of alien immigration exclusion was got rid of by referring it to the Royal Commission. A long discussion on the relief of destitute and deserted persons showed the Imperial Government in a condition of unwillingness to take action to secure that men who left their dependents and went to the colonies should be compelled to keep them, while the Dominion Governments were inclined to contemplate deporting such persons.<sup>1</sup> Legis-

<sup>1</sup> *Maintenance Orders (Facilities for Enforcement) Act*, 1920 (10 & 11 Geo. V, c. 33); *Peagram v. Peagram* (1926), 42 T. L. R. 530.

See *Sudalaimuthu Pillai v. Sudalaimuthu Pillai*, 71 I. C. 173 = 1923 Mad. 2270.

**Remand orders.**—Section 107 (b) empowers an appellate Court to remand a case. O. 41, r. 23, Civil Procedure Code provides that where the Court from whose order an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may remand the case and direct what issue or issues shall be tried, etc. A preliminary point is any point whether of fact or of law, the decision of which avoids the necessity for a full hearing of the suit. *Raman Nayar v. Krishnan*, 45 M. 900 = 69 I. C. 828 = 1923 Mad. 505 (F. B.) The remand can be made only where the whole suit has been disposed of by the Lower Court upon the preliminary point. The appellate court is incompetent after finding on facts to remand the case to the lower court to pass a decree in accordance with that finding. *Sham v. Banarsi*, 66 I.C. 866 = 1922 All. 192.

Apart from this provision, the appellate court has ample inherent powers under s. 151, Civil Procedure Code to remand in cases of error, omission or irregularity. *Ghuznavi v. The Allahabad Bank Ltd.*, 44 C. 929 = 41 I. C. 598. In this case their Lordships of the Calcutta High Court who formed the Full Bench did not approve of the view of Jenkins, C.J. in *Mani Mohan v. Ramratan*, 43 B. 148 = 33 I. C. 329, that the powers of an appellate court to order remand was limited to the provisions of O. 41, r. 23 read with s. 107, Civil Procedure Code. The Full Bench ruling of the Calcutta High Court has been followed in PATNA, *Raghuadan v. Jadunadhan*, 43 I. C. 956 = 3 Pat. L. J. 253; *Musst. Sumitra Kuer v. Bam Kair*, 57 I. C. 561 = 5 Pat. L. J. 410; in BOMBAY *Jethalal v. Varaj Lal*, 46 B. 184 = 1922 Bom. 267; in LAHORE *Umri v. Shah Mahomad*, 5 L. L. J. 269 = 1924 Lah. 36 = 74 I. C. 47; in MADRAS *Raman Nayar v. Krishnan*, 45 M. 900 = 1922 Mad. 505; *Subba v. Krishnama Chari*, 45 M. 449 = 1922 Mad. 112. O. 41, r. 23, has since been amended in Madras, so as to cover all cases of remand.

**Appeal from remand orders.**—An appeal lies from an order remanding a case, where an appeal would lie from the decree of the appellate Court. O. 43, r. I clause (u), Civil Procedure Code. What is the nature of the order? Is it a decree or an order having the force of a decree? It is neither. Consequently, it falls within the scope of this Article and not under Art. I of Sch. I of this Act, *Lakshman v. Rama Esu*, 8 Bom. H. C. R. (A. C.) 17; *Bishunath Saran Singh v. Jagraj Kuar*, 1933 Oudh 191.

But there are certain cases where the order of remand makes an adjudication of the rights of parties and what the lower court is required to do is only to work out the details. For instance where in a suit for possession and mesne profits, a decision is given by the appellate court on the merits and the suit is remanded simply to enable the lower court to ascertain the amount of mesne profits, then the

opinion was divided. South Africa held they did, and insisted on penalizing companies giving deferred rebates by denying them mail contracts and charging higher dues ; Sir J. Ward admitted that rebates were necessary to secure a regular refrigeration service to the Dominion ; Mr. Brodeur complained that an insurance combine penalized Canadian ports for the benefit of United States ports, while Mr. Buxton admitted that there was grave doubt in the United Kingdom of the advisability of putting into effect even the moderate proposals of the recent Royal Commission on Shipping Conferences. The Imperial Government met Australia by agreeing to use its best influence to reduce Suez Canal dues, making it clear that it placed Imperial interests above its profits as shareholder in the Company. Concerted action as to participation in international exhibitions was agreed on. The Australian suggestion of the adoption of the decimal system of coinage, weights, and measures, was regarded with indifference or dislike by the rest of the Conference, and the suggestion of the interchangeability of silver coinage was negatived by the Imperial Government as only possible if the Dominions were content to give up the profits on silver coin. There was agreement on the desirability of uniformity of law as to patents, trade-marks, and companies, and accident compensation was generally approved, but not as regards South Africa ; satisfaction was expressed at the outcome of the Copyright Conference of 1910.

(vii) *Legal Questions.* The Dominions consented to the very natural request of the Imperial Government that, when deporting aliens, e.g. from Canada or South Africa, due notice should be given to it, so that it might be able to apply to such aliens the provisions of its Aliens Act, and save itself from being burdened with criminals from the Dominions. The question of alien immigration exclusion was got rid of by referring it to the Royal Commission. A long discussion on the relief of destitute and deserted persons showed the Imperial Government in a condition of unwillingness to take action to secure that men who left their dependents and went to the colonies should be compelled to keep them, while the Dominion Governments were inclined to contemplate deporting such persons.<sup>1</sup> Legis-

<sup>1</sup> *Maintenance Orders (Facilities for Enforcement) Act, 1920* (10 & 11 Geo. V, c. 33) ; *Peagram v. Peagram* (1926), 42 T. L. R. 530.

held that it did not amount to a decree as there was no final determination in the appellate court of all or any of the matters in controversy between the parties; *Banka Bahary v. Birendeanath*, 55 C. 219. It is all a case of what a court has done and not what it ought to have done. Where the powers of an appellate court in the matter of remand are not confined to O. 41, r. 23 and the court could in the exercise of its inherent powers (s. 151) remand cases where O. 41, r. 23 is not applicable, it follows that the order of remand cannot be *appealed* against as O. 43, r. 1 (u) specifically refers to only remands under O. 41, r. 23, though by virtue of the local amendment in Madras, every order of remand is covered by that rule and is an appealable order. Of course a revision petition can be filed. But in cases where as for example in the decisions quoted above (*Raghunada Das v. Jhari Singh*, 3 Pat. L. J. 99; *Subba Goundan v. Krishnamachari*, 45 M. 449) the order of remand is by itself a final adjudication of the rights of the parties when obviously it partakes of the nature of a decree, an appeal lies as from a decree.

#### **Orders relating to Arbitration proceedings and award.—**

Section 104 of the Code of Civil Procedure specifies the cases when appeals lie from orders relating to arbitration proceedings and award.

Section 104 Cl. (a) refers to an order superseding an arbitration where the award has not been completed within the period allowed by the court. Cl. (b) refers to an order on an award stated in the form of a spacial case, and Cl. (c) to an order modifying or correcting an award. These are obviously orders and appealable as such and the court-fee leviable is under the Article. Cl. (d) relates to an order filing or refusing to file an agreement to refer to arbitration. In a suit to file an agreement to refer a matter to arbitration a decision was passed refusing a reference on the ground that the agreement to refer was not proved. On the plaintiff appealing against such refusal, it was held that a decision passed under s. 523, Civil Procedure Code is a decree and an appeal lies therefrom under s. 540 of the Code. *Gowdu Magatha v. Gowdu Bagwan*, 22 M. 299. Cl. (e) refers to an order staying or refusing to stay a suit where there is an agreement to refer to arbitration. Here too it is only an order. Cl. (f) refers to an order filing or refusing to file an award in an arbitration without the intervention of the court. There has been a good deal of confusion and conflict of decisions on the matter. This is due to the fact that under old Civil Procedure Code such orders were held to be decrees and hence appealable as such, in which case the court-fee payable was under Article 1, Sch. I of the Court-Fees Act. On an application to file an award made on a reference to arbitration without the intervention of the court a decree was made to the effect that the plaintiff do recover a certain sum of money as awarded by the arbitrator. It was held that an order directing such an award to be filed is an order having the force of a decree and an appeal from such an order is an appeal from a decree and ought to bear a court-fee in accordance with Art. 1,



20 March and 2 May ; the Colonial Secretary at these meetings represented the Crown Colonies, &c. On the other hand he, and not the Prime Minister, presided at a series of meetings of the Imperial War Conference, which was also distinguished from the Cabinet by its subject matter, less urgent issues and those not directly connected with the war being relegated to it. At the last meeting of the War Cabinet it was agreed that such meetings should be annual or more often if requisite ; and that the Prime Ministers should be members, equally authorized alternates to be supplied by the Dominions if the Prime Ministers were not available, while India was to have a spokesman of her people chosen by the Indian Government. Sir R. Borden, on 3 April, addressing the Empire Parliamentary Association, emphasized the equality of the members of the Cabinet ; the British Prime Minister presided, but only as *primus inter pares* ; each nation preserved unimpaired its perfect autonomy, its self-government, and the responsibility of ministers to its own electorate. At the close of the Cabinet General Smuts was invited to remain in England in an anomalous position ; he did not represent the Union, nor was he an Imperial minister, but he was a sort of adviser to the Imperial Government and the British War Cabinet.

In June 1918 the Imperial War Cabinet reassembled, at the crisis of the fate of the Allies, when the German onslaught had reached the Marne. All the Dominions were represented, and India had, beside the Secretary of State, Mr. Sinha to speak for her people and the Maharajah of Patiala to represent her princes. The British War Cabinet took part in the discussions, and it was stated that the Dominion members took an important share in the deliberations which determined the Imperial attitude at the Versailles session in July of the Allied Supreme War Council, and they were present as guests at a Council meeting on 5 July. Two very interesting resolutions were reached. The Prime Minister admitted the right of the Dominion Prime Ministers to communicate direct with him, they alone to be the arbiters as to what matters were of such importance as to justify this procedure ; telegrams were as a rule to pass through the Secretary of State, but the right was conceded of direct communication even in this manner. Secondly, to secure continuity and regular consultation with the Dominions between

*Orders under O. 16, r. 20* pronouncing judgment against a party for refusal to give evidence. This adjudges the rights of parties and is an order having the force of decree.

*Orders under O. 21, r. 34.*—An order on an objection to a draft of a document or of an endorsement, has not the force of a decree.

Order under O. 21, r. 72 or 92 setting aside or refusing to set aside a sale, Order under O. 22 r. 9 refusing to set aside the abatement or dismissal of a suit, Order under O. 22, r. 10 giving or refusing to give leave to continue suit, Order under O. 25, r. 2 rejecting application for an order to set aside the dismissal of a suit, Order under O. 34, r. 3 or 8 refusing to extend the time for the payment of mortgage money, Orders in inter-pleader suits under rr. 3, 4 or 6 of O. 38, or under r. 1, 2, 4 or r. 19 of O. 39 or under r. 1 or 4 of O. 40, or an Order of refusal under r. 19 of O. 41 to readmit or under r. 21 of O. 41 to rehear an appeal or order refusing grant of a certificate under O. 45, r. 6 or an application for review under O. 47, r. 4—all these orders against which appeals are provided for in O. 43, r. 1, Civil Procedure Code are simple orders and they are not such as could be deemed to have the force of decrees. Even in the case of an order under O. 23, r. 3. recording or refusing to record an agreement, compromise or satisfaction of a claim, though a decree might result when the compromise is recorded, still the decree is something apart from the order directing the record of compromise and an appeal lies from the order as distinct from the decree. In that case it cannot be stated that the order is one having the force of a decree.

An appeal from the final decree passed under O. 34, r. 5, Civil Procedure Code requires an *ad valorem* Court-fee and cannot be stamped as an appeal from an order. "Looking at the change which has been made by the Legislature, in O. 34, rr. 4 and 5 as compared with ss. 88 and 89, Transfer of Property Act, we have no doubt that the court-fee payable is *ad valorem*." *Bajrangi Lal v. Mahabir Kunwar*, 35 A. 476. See under Sch. I, Art. 1 as to appeal against an order on an application to pass a final decree under O. 34, r. 5.

**O. 21, r. 50 (2).**—An appeal from an order under O. 21, r. 50 (2), C. P. Code is an appeal from a decree and not a Civil Miscellaneous Appeal and is chargeable to *ad valorem* court-fee as for a regular appeal. *Bhutnath Ta v. Barinda N. Bhattacharjee*, 60 Cal. 530 = 37 C.W.N. 227 = 1933 Cal. 546. See also *Jugal Kishore Gulab Singh v. Dina Nath Sri Ram*, 35 P.L.R. 555 = 1934 Lah. 958 and other cases cited under Sch. I, Art. 1.

**Execution against surety.**—Section 145 Civil Procedure Code provides the decree or order may be executed against the surety and that he will be deemed a party within the meaning of s. 47. Such orders come within the definition of a decree and court-fee will be leviable as in an appeal from a decree. But the local Governments

Conscious of the absurd misnomer of the term 'Cabinet', for which he was not responsible, he attempted to justify it by the remark that Cabinet had changed its meaning in the course of time and might change it again.

If I should attempt to describe it (he added) I should say it is a Cabinet of Governments.<sup>1</sup> Every Prime Minister who sits around that Board is responsible to his own Parliament and to his own people; the conclusions of the War Cabinet can only be carried out by the Parliaments of the different nations of our Imperial Commonwealth. Thus each Dominion, each nation, retains its perfect autonomy. I venture to believe, and I thus expressed myself last year, that in this may be found the genesis of a development of the constitutional relations of the Empire which will form the basis of its unity in the years to come.

This description is enough to dispose of the absurd view that the Imperial War Cabinet was an Executive for the Empire as the British War Cabinet was for the United Kingdom. The differences between a true Cabinet and this kind of Cabinet were far more important than the similarities. The Imperial Cabinet had no official head: the presidency of Mr. Lloyd George was complimentary. The members sat by virtue of their representation of different parts of the Empire, not by his appointment. There was no collective responsibility: each delegate was responsible only to his own Government and Parliament. There was no possibility of majority decision, no necessity of bowing to the will of the majority or resignation: each Dominion delegation agreed to any resolutions subject to obtaining the concurrence of the Dominion Cabinet and of the Dominion Parliament. In no sense had the Imperial War Cabinet any executive capacity. If any resolution were agreed to, it could be made good, as far as the United Kingdom was concerned, by the immediate action of the Imperial Ministers, for they commanded the Imperial Parliament's confidence, and in the *Defence of the Realm Act* and the willingness of Parliament to pass any legislation asked for they were able to effect their purposes. What, however, made the discussions extremely valuable, and gave reality to the proceedings of the Imperial

<sup>1</sup> Sir R. Borden himself has never suggested any intelligible sense of this *bon mot*. Mr. Bruce in the Commonwealth Parliament (3 Aug. 1926) with marked emphasis treated the War Cabinet as a wholly abnormal development in war times (p. 4774).

having been initiated not by a suit but by a petition no appeal properly so called could be presented in it at a later stage, and that the appeal was therefore chargeable only as a petition under Sch. II, Art. 1.

It is difficult to understand why when the matter is called an appeal in the Tenancy Act it should be regarded only as a petition for the purpose of the Court-Fees Act. S. 107 of the Tenancy Act provides that the order of the Revenue Officer shall have the force of a decree. This provision is put in not to give a right of first appeal from the Revenue Officer's decision to the Special Judge, for that right is expressly given by s. 108, but to give a right of second appeal from the Special Judge's decision to the High Court under s. 100 of the Civil Procedure Code. It is extremely anomalous to treat the appeal as an appeal from a decree for the purpose of the Tenancy Act and the Civil Procedure Code and as a petition for the purpose of the Court-Fees Act. There appears to be no warrant for making such a distinction. The Court-Fees Act itself does not contain any definition of the words 'decree,' 'order,' 'appeal,' 'suit' etc. The reason is obvious. It is not its province to lay down principles of substantive law. Its function is to charge court-fees on matters brought before courts; and for this purpose it can only take the nomenclatures adopted for those matters by other Acts which guide and regulate the procedure of courts. See observations of Schwabe, C. J. in S. R. 1923/23 (Mad.) referred to in the commentary under Sch. I Art. 1, where it was contended that an order rejecting a plaint being only "deemed to be" a decree in the C. P. C., it was in essence not a decree at all and that an appeal from it was therefore only chargeable as an appeal from an order under Sch. II Art. 11, but his Lordship negatived the contention and held that what is deemed to be a decree in the C. P. C. is a decree for the purpose of the Court-Fees Act also.

It has further to be remarked that when the Government has made a rule clothing the proceeding with the character of a suit, there appears to be no valid reason why it should not be regarded as a suit for the Court-Fees Act also. It is therefore to be doubted whether the decision in 18 Cal. which was superseded by the decision in 23 Cal. is not the correct view. These Calcutta decisions under the old Bengal Tenancy Act are not now of any practical consequence, as special rules have now been framed regarding the court-fees in the proceedings under the Act, and the Act also has been amended by Act IV of 1928.

In 8 Mad. 22, a decision under the Madras Forest Act, it was held that the decision of the Forest Settlement Officer appealed from had been made in proceedings in the nature of suit by virtue of the provisions of that Act, that the decision was a decree, and that the appeal therefore came within Sch. II Art. 17. So also in the recent decision 55 Mad. 641, where the appeal was from Land Acquisition proceedings and it was held that it came within Art. 17.

**Indian Companies Act.**--Appeal from orders under s. 58 or 214 of Act VI of 1882 (now Act VII of 1913) fall under this Article.

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*Khelframoni v. Shyama*, 21 Cal. 539. Though the decision of the District Judge granting or dismissing an application for probate is mentioned as an order in the section, it is really a decree within the meaning of s. 2 C. P. C. and is appealable as such, though it is not one of the appealable orders mentioned in s. 104. *Umrao Chand v. Bindraban Chand*, 17 All. 475 and *Shaik Azim v. Chandra Nath*, 8 C. W. N. 748. It was contended in these cases that as the decision of the District Judge is termed an "order" in the section and as that order is not one of the appealable orders mentioned in s. 104, no appeal at all lay, but the court held that it is appealable as a decree, the application for probate being a suit by virtue of the provision in s. 83 of the Probate Act (s. 295 of the present Act) and the order passed having conclusively determined the right claimed so far as the District Judge's court was concerned. It is not all orders that are decrees, but only such orders as satisfy the definition in s. 2 C. P. C., i.e., as conclusively determine the right claimed by the parties in the suit. In *Boa Mountstephens v. Hunter Garnet Orme*, 35 All. 448, the applicant executrix appealed to the High Court against the order of the District Judge dismissing her application for letters of administration. She framed her appeal as an appeal against an order and paid a court-fee of Rs. 2 under Sch. II, Art. 11 of the Court-Fees Act, and contended that the decision of the District Judge is termed an order in the Succession Act, that therefore the fee paid was correct, and also that the practice in the court as regards appeals from such orders of District Judges was to file them as appeals against orders on a fee of Rs. 2. But it was held, following the above decisions that, under s. 261 of the Succession Act (s. 295 of the present Act), the "proceeding in the court below was actually in the form of a civil suit in which the applicant was the plaintiff and the person who opposed the grant was the defendant", that the order was therefore a decree within the meaning of s. 2 C. P. C. that the practice as regards appeals from the original jurisdiction of the High Court itself in the matter was to treat them as appeals from decrees whatever may have been the practice with regard to similar appeals from the decisions of District Judges, that therefore the appeal was a first appeal from a decree in a *suit*, and that the relief in appeal being incapable of valuation was subject to a fixed court-fee of Rs. 10 under Sch. II Art. 17 of the Court-Fees Act. In Madras, in Appeal No. 94 of 1900 (unreported—Benson and Bhashyam Ayyangar, JJ.) it was held that the order of the District Judge under the Probate and Administration Act had the force of a decree, that therefore Sch. II Art. 11 was inapplicable, and that the appeal should be stamped *ad valorem* under Sch. I Art. 1. This was followed in appeal No. 194/1900 (unreported, Davies and Bhashyam Ayyangar, JJ). The same bench decided on the same date in civil miscellaneous appeal No. 125 of 1900 (unreported) that an appeal under s. 19 of the Succession Certificate Act of 1889 (now s. 384 of the Indian Succession Act of 1925) is only an appeal against an order not having the force of a decree and that it need be stamped

said or thought, the Dominions were still 'subject provinces of Great Britain. That is the actual theory of the constitution and in many ways which I need not specify to-day<sup>1</sup> that theory still permeates practice to some extent'. He pointed out that the resolution negatived the federal solution; the United States was indeed a success, but it was a compact continent, wholly unlike young nations widely separated in space, of different race, speech, and economic conditions. Sir J. Ward still thought of federation as an ultimate goal, but recognized that the United Kingdom must first be reorganized on a federal basis. More important was the definite recognition that the resolution of the Colonial Conference of 1907, which excluded India from the Conference, should be modified, and it was further agreed that India should have the right to apply to the Dominions measures of immigration restriction similar to those used against her nationals. Uniformity of action as to naturalization was duly approved.

Defence problems evoked a request to the Admiralty to prepare after the war a scheme for the effective naval defence of the Empire. War Office proposals were discussed for uniformity of training, of ordnance personnel, and of equipments and stores, while stress was laid on the development in the Dominions of the power of self-supply in these matters. The proposal for an Imperial War Graves Commission was accepted on the lines of the Prince of Wales' letter of 15 March.

The economic resolutions were dominated by war conditions. It was agreed to seek to make the Empire independent of other countries in respect of food supplies, raw materials and essential industries, and to encourage migration. The creation of an Imperial Mineral Resources Bureau was approved, and the use of Trade Commissioners to push British trade in the Dominions was recommended. Agreements were reached as to patents and trade marks, made specially important by war conditions, and it was agreed to consider after the war the burden of double income tax which war rates had made of grave importance.

The Conference of 1918<sup>2</sup> as in 1917 kept much of its proceedings secret. The issue of correspondence channels was there first discussed, the objections to the Prime Minister dealing

<sup>1</sup> For a list, see Keith, *Imperial Unity and the Dominions*, pp. 589 ff.

<sup>2</sup> *Parl. Pap.*, Cd. 9177.

no *ad valorem* fee was leviable under Sch. I Art. 1 in the appeal (from the probate order), observing that the only title which the order appealed against gave to the petitioner was the right to administer the estate, that if he sues to recover the estate he will have to pay stamp duty on its value, and that stamp duty on the value of the estate should not be twice exacted. Their Lordships also excluded the application of Sch. II Art. 11 as the order appealed from decided the representative title and therefore had the force of a decree.

In a later case *Perumal Chetty v. W. Kandasamy Chetty*, (1922) 44 M. L. J. 146 (148), where the appeal was from the original side of the court, it was held that, the proceeding out of which the appeal arose was a suit in which the petitioner was plaintiff and the caveator defendant, that the decision in it was therefore a final judgment and not an order and that therefore a minimum fee of Rs. 150 (now Rs. 225) was payable in the appeal. The practice therefore in Madras as regards appeals from decisions of District Judges and from the original side of the High Court appears to vary. This was also the case in Allahabad before the decision in 35 Allahabad mentioned above.

It is submitted that the decision in 21 M. L. J. 481 cannot be supported. It is opposed to the three unreported Madras decisions mentioned above and also to the Allahabad and Calcutta decisions under the Succession Act. It is quite unsafe to apply decisions under the Bengal and the Guzerat Tenancy Acts analogically to cases under the Succession Act where there are decisions to the point under the latter Act itself. The Calcutta High Court itself has not applied its decisions under the Bengal Tenancy Act to cases under other Acts analogically. The Calcutta decisions referred to above lay down that a proceeding under the Succession Act is a suit and that an order passed in it is a decree. These decisions have been followed by the Allahabad High Court in 35 All. 445 as stated above in holding that an appeal under the Probate Act comes within Sch. II Art. 17 of the Court-Fees Act—which Article applies to a memorandum of appeal “in a suit.” More recently in *Pran Kumar Pal v. Darpahari Pal*, 54 Cal. 126 the Calcutta High Court has held that proceedings for the grant of probate when contested come within the meaning of the word ‘suit’ in cl. 13 of the Letters Patent. The above decision in 23 Cal. 723 under the Tenancy Act was not followed in 33 Cal. 11 (13) where the appeal was from an order filing an award made without the intervention of court (s. 525 of the C. P. C. of 1882). It was contended there that the proceeding which led to the order filing the award was commenced not by a suit but by a petition and that therefore according to the decision in 23 Cal. only a petition fee of Rs. 2 was payable in the appeal. But their Lordships distinguished that decision as one under the Tenancy Act the provisions whereof were substantially different from those in ss. 525 and 526 C. P. C. (which direct that the petition shall be numbered as a suit and the parties ranged as plaintiff



Dominion representatives and to contain representatives of the different interests concerned. An Imperial news service, shown to be needed by the war, was approved in principle; the cheapening of cable rates commended, an inter-imperial parcel service approved, and also the calling of a Conference to consider uniformity of statistics and the creation of a Statistical Bureau. Immigration into the Dominions from the United Kingdom was pressed for, and the establishment of a consultative committee to keep in touch with the Imperial organization recommended.

The recommendations of the Conference were carried out in many details. The Mineral Resources Bureau was established in 1918 and has turned out large quantities of information, presumably worth printing. A Bureau of Mycology has rendered service, while in 1920 an important Commission for shipping issues was constituted, which since has rendered many reports on questions such as rebates and rates, and has secured substantial advantages for Canada in the reduction of insurance rates. In 1925, however, efforts were made in Canada to secure a control over the freights from Canada by setting up a subsidized service, the Commission being deemed ineffective. But the matter failed to proceed further as Sir W. Petersen, the proposed contractor, died, no doubt in part as a result of the excitement of the struggle at Ottawa over his proposals, which were examined indecisively by a Committee.

More important was the decision in 1919 to accord Imperial preference to the Dominions in the shape of reductions on existing duties, no new duties being imposed for the purpose. Both then and in 1920 the grant was opposed by the Opposition on the score that, save by taxing food and raw materials such as wool, no real concessions could be made to the Dominions. Emigration was also furthered by the creation of the Overseas Settlement Committee on an improved basis to undertake the humbler duties of the Emigrants' Information Office, and the policy of subsidizing emigration was started first for the benefit of ex-soldiers who wished to try their fortune abroad.

A most happy outcome of the Conference was the decision of the Prince of Wales to make himself known in the Dominions. Visits were paid to Canada in 1919, to Australia and New Zealand in 1920, with the most fortunate results in either case.

A proceeding for probate or letters of administration is thus seen to be a suit and the order in it a decree. The appeal from it is a regular appeal against a decree, and not appeal against an order or a mere petition. But it is submitted it is not fair to charge in the appeal *ad valorem* fee on the value of the estate, as the right agitated in the appeal is not the right to the estate itself but only the right to administer it. This appears to be a relief incapable of valuation, for which a fixed fee is payable under Sch. II Art. 17 of the Court-Fees Act as held in 35 All. 448.

**Malabar Tenancy Act (Madras Act XIV of 1930).—**

There is no separate schedule of court-fee prescribed in this Act for suits and appeals under it. Consequently it is the general provisions of the Court-Fees Act that have to be applied to them. In s. 50 of the Act it is enacted that certain orders under it shall be appealable "as if they were decrees in suits." The appeals therefore are not chargeable with court-fees under this Article which applies only to appeals against orders. In S. R. No. 22825 of 1932 (unreported), where the lower court had granted an original petition filed by the tenant under s. 22 of the Act for renewal of the kanam demise and the landlord preferred an appeal on the ground that in granting renewal the lower court should have enhanced the rent to Rs. 46-5-8, it was held (Burn, J.) that the appeal being from a decree did not come under this Article and that as the amount in dispute was easily ascertainable, being the difference between the rent as declared by the lower court and the rent claimed by the landlord, *ad valorem* fee was payable on that amount under Article 1 of Sch. I in the appeal. It is to be noted that in this appeal the subject-matter in dispute was a definite amount and was therefore capable of easy valuation. But where an appeal is simply on the ground that renewal of the tenancy should not have been allowed by the lower court, the subject-matter of the appeal is not so easily capable of valuation and the appeal would then come, it is submitted, within Art. 17-B of Sch. II. *Vide* the decisions cited above under the Madras Forest Act and the Land Acquisition Act, where also the proceedings are started, as under the Malabar Tenancy Act by a petition. The decision of the Calcutta High Court in 23 Cal. 723 under the Bengal Tenancy Act cannot be applied to the case. There is no precise analogy between the Malabar and the Bengal Tenancy Acts, as the former Act provides that the orders under it have the force of decrees "in suits", while the latter provides merely that orders under it have the force of decrees. The words "in suits" do not occur in it. Further, the correctness of the Bengal decision is open to doubt. See comments on that decision, *supra*.

**Guzrat Talukdars's Act (Bom Act VI of 1888).—**Order rejecting application for execution of partition decree under the Act falls under Article 1 of Sch. II and not under this Article. *Jansang v. Goyabhai Kikabhai*, 16 B 408.

applied to it. It was in fact a real meeting of the Imperial Conference with full representation of the Dominions and India, where the Maharao of Cutch spoke for the princes, and Mr. S. Sastri for the people, as well as the Secretary of State. The resolutions achieved were of moderate importance.

(a) *Constitutional Questions*

Two quite distinct lines of opinion were manifested at the Conference. Mr. Lloyd George was expansive and genial, but had nothing but goodwill to offer as a contribution towards the solution of the relations of the Empire. Mr. Meighen was convinced that Canada wished no changes, and Mr. Hughes, in an allocution largely addressed to General Smuts, insisted that all was for the best in the best of all possible worlds :

We have been accorded the status of nations. Our progress in material greatness has kept pace with our constitutional development. Let us leave well alone. That is my advice. We have now on the agenda paper matters which mark a new era in Empire government. We, the representatives of the Dominions, are met together to formulate a foreign policy for the Empire. What greater advance is conceivable ? What remains to us ? We are like so many Alexanders. What other worlds have we to conquer ? I do not speak of Utopias nor of shadows but of solid earth. I know of no power that the Prime Minister of Britain has that General Smuts has not.

It is regrettable that the comments of General Smuts on this rhodomontade were not published. Mr. Massey recognized frankly a decline in status since the days of the War Cabinet. Then, he insisted, it was the right of the Dominions with the United Kingdom to represent directly to the sovereign matters in which they had a common interest, but that power was gone, the implication being that the Imperial Government now alone had direct access to the King. There was no doubt some confusion in that. Even the Imperial War Cabinet could not advise the King in the strict sense of the word ; it could resolve on resolutions which the King could be advised by the British War Cabinet to accept for the United Kingdom, but Mr. Massey was never a good constitutional lawyer.<sup>1</sup> He was, however, firm in asserting that he had not the slightest sympathy with

<sup>1</sup> This implies no lack of appreciation of Mr. Massey's many sterling and amiable qualities.

See Probate Procedure in British India by Mr. (now Justice) Cornish, p. 254.

Where a person interested in the estate of the deceased appears on citation, it is not necessary for him to lodge a caveat, which is in the nature of a precautionary measure intended to ensure that there shall be no proceeding in the matter of the estate of the deceased without notice to the person, who files a caveat. Therefore a petition by which a party upon whom citation has been issued opposes the grant of probate is not a caveat and need not be stamped as such, but a petition fee is sufficient for it. *Bhabatarini v. Hari Charan Banerjee*, 20 C. W. N. 787=26 I. C. 38.

**Procedure.**—The procedure to be followed in the case of caveats lodged against the grant of probate or letters of administration is laid down in ss. 234 and 285 of the Indian Succession Act, 1925 and in Madras *see* the C. R. P. and C. O. of the Madras High Court Vol. I.

### Article 13.

Application under Act No. X of 1859, s. 26, or Bengal Act No. VI of 1862, s. 9, or Bengal Act No. VIII of 1869, s. 37.	.....	Five rupees.
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### COMMENTARY.

**Amendments.**—The Court-Fees Act. being a very old Act enacted nearly 60 years ago in 1870, its provisions bristle with references to repealed and defunct enactments and the sections thereof have not been brought up-to-date. The necessity, therefore, arises in almost all cases to find out the corresponding sections of the new Act for the references embodied in the section.

**Act X of 1859.**—This was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), *see* the reprint of the Act as modified up to 31st May 1907, published by the Government of Bengal, in those portions of the Lower Provinces to which that Act extends and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1876 (Beng. Act I of 1879); (*see* now Beng. Act VI of 1908), Bengal Code, Vol. II; in the Province of Agra by Act XVIII of 1873; and in the Central Provinces by the Central Provinces Tenancy Act, 1883 (IX of 1883), Central Provinces Code.

**Bengal Act VI of 1862.**—Bengal Act VI of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends; and in the Chota Nagpur Division (except Manbhum and the Tribu-

British Commonwealth, it is desirable that the solidarity of the Indians to citizenship should be recognized. rights of such Indians dissented, and India viewed with profound But South Africa dissented, and India viewed with profound regret the South African attitude, hoping, however, by direct negotiation to reach accord.

(c) *Foreign Relations*

The opinion of the Conference as to the Japanese alliance was divided, but it was made clear by the Lord Chancellor and the law officers that the Treaty was still in force, and must, therefore, either be accepted as subsisting or deliberately denounced. In any case, however, it would be necessary to alter it to avoid disagreement with the Covenant. Fortunately, a solution of an impasse was afforded by the invitation of the President of the United States to a Conference on Disarmament at Washington, to be preceded by a discussion between the powers principally interested in the Far East and the Pacific. This was interpreted by the Imperial Government to mean that a policy to replace the Japanese alliance by a wider compact should be designed, and the representatives of the Dominions were associated in an effort to plan out a pact between the United States, the British Empire, and Japan. It was proposed to hold a meeting of diplomats of the three countries in London when the Dominion Ministers could be present, and, failing this, the offer was made to proceed to Washington for such discussions, but the President negatived either suggestion, and much of the work done was rather wasted. It was provisionally agreed that the interests of the Empire at Washington at the Disarmament Conference should be represented by the United Kingdom, but, as has been seen, General Smuts repented of the arrangement and secured the presence of Dominion representatives, the United States Government welcoming their presence on the British delegation, but, quite correctly, insisting that she could not act otherwise than she had done, seeing that with the Imperial Government alone had she any diplomatic relations.

Other issues of foreign policy were also discussed, the Dominion Prime Ministers being invited to meet the Imperial Cabinet to consider these issues. There was as usual a general agreement on foreign policy, which was explained at length, and the procedure represented a reversion to that of the Peace Delegation.

## Article 17.

Plaint or memorandum of appeal in each of the following suits—

(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court :

(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates :

(iii) to obtain a declaratory decree where no consequential relief is prayed :

(iv) to set aside an award :

(v) to set aside an adoption :

(vi) every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act.

.....

Ten rupees.

## COMMENTARY.

**Amendments.**—This article has been amended and amplified by the several local Acts in Bengal, Bihar and Orissa, Bombay, Central Provinces, Madras and United Provinces.

**Provincial amendments—Bengal.**—The fee for items (i), (ii), (iv) and (vi) is raised to Rs. 15 and the fee for items (iii) and (v) is raised to Rs. 20 by Act IV of 1922. By Act VII of 1935, the following entry has been inserted after entry (v), namely :

v-A. for partition and, separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a coparcener or co-owner.

Fifteen rupees.

It comes now from the east, and to-morrow from the west. But from whatever quarter it comes we meet it as a united Empire, the whole of our strength is thrown against the danger which threatens us. If some Dominions say, 'We are not in any danger, you are, you pay; we will not, or cannot, contribute towards naval defence', an impossible position is created. I cannot subscribe to such a doctrine. It is incompatible with the circumstances of our relation to Britain and to each other, it menaces our safety and our very existence, it is a negation of our unity.

As Canada, the Union, and Newfoundland had no intention of paying, the result was the following negation :

While recognizing the necessity of co-operating among the various portions of the Empire to provide such naval defence as may prove to be essential for security, and while holding that equality with the naval strength of any other power is a minimum standard for that purpose, this Conference is of opinion that the method and expense of such co-operation are matters for the final determination of the several Parliaments concerned, and that any recommendations thereon should be deferred until after the coming conference on disarmament.

It was, of course, made clear by Mr. Hughes that his idea of contribution was in the shape of a local navy as already determined on, and various more useful talks took place at the Admiralty as regards local naval forces, oil supply, &c. The discussion of military and air matters was equally unproductive of any results, but the views of the General and Air Staffs as to modes of co-operation were once more placed before Ministers.

#### *(e) Empire Settlement and Migration*

The Conference reached on this head important conclusions. The Imperial Government was prepared to find funds to co-operate with the Dominions on a basis of equal expenditure in securing cheaper passages and furthering settlement, and the Dominions concurred in the proposals, urging Imperial legislation at once for this end. The Union explained that it had little opportunity for white labour, and, therefore, could not co-operate on the scale of the other Dominions. Up to April 1922, there had been sent to the Dominions 50,000 settlers, ex-service men and their dependants, at a cost of £2,700,000. The *Empire Settlement Act*, 1922, made provisions for the sum of £3,000,000 to be available annually to meet emigration costs ;

**Madras.**—By Act V of 1922, the following Articles have been substituted, namely :—

17. **Plaint or memorandum of appeal in a suit—**

(i) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court :

...

Fifteen rupees.

(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates.

.....

Fifteen rupees.

(iii) for relief under s. 14 of the Religious Endowments Act, 1863, or under s. 91 or under s. 92 of the Code of Civil Procedure, 1908.

... ..

Fifty rupees.

17-A **Plaint or memorandum of appeal in a suit—**

(i) to obtain a declaratory decree where no consequential relief is prayed :

When the plaint is presented to or the memorandum of appeal is against the decree of—

(ii) to set aside an award :

a District Munsif's Court or the City Civil Court.

Fifteen rupees.

(iii) to obtain a declaration that an alleged adoption is invalid or never in fact took place or to obtain a declaration that an adoption is valid.

a District Court or a Sub-Court.

Hundred rupees if the value for purposes of jurisdiction is less than ten thousand rupees; five hundred rupees if such value is ten thousand rupees or upwards.

17-B **Plaint or memorandum of appeal in every suit where it is not possible to estimate at a money value the subject-matter in dispute and which is not otherwise provided for by this Act,**

When the plaint is presented to or the memorandum of appeal is against the decree of—

a Revenue Court.

Ten rupees.

a District Munsif's Court or the City Civil Court.

Fifteen rupees.

a District Court or a Sub-Court.

One hundred rupees.



expressed deep regret at the disaster which had just befallen Japan and at the death of Mr. Bonar Law, its convener, and piously approved the necessity of publicity, but the accounts of its deliberations were as unsatisfactory as ever, while a candid critic has condemned the degeneration of the meeting into a series of pleasant chats between the Prime Minister and the other representatives. The Irish Free State was represented for the first time, and India sent Sir Tej Bahadur Sapru and the Maharajah of Alwar. Economic questions were handed over to an Economic Conference<sup>1</sup> whose work had more importance and reality.

(a) *Constitutional Questions*

No issue of any constitutional importance was touched on. As in 1921, the Colonial Secretary made a statement regarding the Crown Colonies, Protectorates, and Mandated Territories, which, however, was really otiose, as none of the Dominions had the slightest claim to intervene in these issues. Assurances were given, however, that the cession to Belgium of Ruanda still left a strip of Tanganyika west of Lake Victoria which would be used for the Cape-Cairo railway. Developments in Palestine were also brought before the Conference, but the Prime Ministers very properly refrained from accepting any responsibility, it being obvious that, if they intervened as regards the British mandates, they would be liable to interference as regards their own. The mention of the affairs of the Colonies, &c., was clearly due to the desire to afford opportunity of self-expression to the Colonial Secretary, and this could be<sup>2</sup> avoided by his removal from the Conference under the new scheme of double Secretaryships of State. A somewhat unnecessary discussion took place on the status of the High Commissioners, turning on such trifles as exemption from taxation, customs duties, and precedence

(b) *The Position of British Indians in the Empire*

Lord Peel opened a discussion with the admission that Dominion restrictions on Indians were believed in India—though, absurdly, he did not share the view—to be based on colour feeling, and Sir Tej Bahadur Sapru, supported by the

<sup>1</sup> *Parl. Pap.*, Cmd. 1990, 2009, 2115.

<sup>2</sup> The procedure in 1926 showed that this was not desired.

162 F. B. It has indeed been said that the words 'summary decision' is not sufficiently well known to justify the use of them as a technical term in an Act of the Legislature without any definition. Without positively binding ourselves to the proposition, that every decision or order not made in a regular suit or appeal is a summary decision or order, we are clearly of opinion, that decisions as to the removal or retention of attachment pronounced under s. 246 of Act VIII of 1859 are summary decisions or orders. The circumstance that Legislature expressly recognises the right of the party defeated in the proceeding under that section to bring a regular suit to reagitate the point decided is a strong indication that the Legislature regarded the decision under that rule as summary: but in saying this we do not intend to imply that the legislative recognition of such a right is an indispensable element in fixing whether or not a decision is summary." *Dayachand v. Hemchand*, 4 B. 515 at page 522.

**Summary decision or order under the Civil Procedure Code.**—This is different from the summary suits which are suits on negotiable instruments and provided for in O. 27 of the Code. Summary decisions or orders arise for example in claim proceedings and proceedings relating to dispossession in purchases under a court sale. Rr. 59 to 62 of O. 21, Civil Procedure Code provide for a summary investigation into possession as distinct from a thorough trial of ultimate right. The summary decision is a conclusive one subject to the result of a regular suit, that is, it is non-appealable. Similarly, O. 21, r. 103 provides that a party not being a judgment-debtor against whom an order is made under rr. 98, 99 or 101 may institute a suit to establish the right he claims, but subject to the result of such suit the order is conclusive. Consequently such orders are summary orders.

### Suits to set aside claim orders.

1. Where a claim petition is dismissed even for the default and without investigation, Rule 63 of O. 21 applies and a suit lies to set it aside. *Nagendra Lal v. Fani Bhushan Das*, 45 C. 785=44 I. C. 265; *Venkataratnam v. Ranganayakamma*, 41 Mad. 985=48 I. C. 270; *Maung Pya v. Matilakya*, 1 R. 481=1924 Rang. 42=76 I. C. 811. But see *Gokul v. Mohri Bibi*, 40 A. 325 and *Debi Prasad v. Maharaj Rupchand*, 49 All. 403, the correctness of which it is submitted is open to question. See also *Satindra Nath v. Shibu Prasad*, 1922 Cal. 166.

2. Where a claim is not investigated but an order is made to notify the claim at the time of auction, it is a summary decision under O. 21, r. 60, see *Lakshmi v. Kadiresan*, 41 M. L. J. 168=63 I. C. 431; *Saharabi v. Ali*, 44 M. L. J. 141=1923 Mad. 295. See also 41 Mad. 985.

3. A claim order though passed *ex parte* is equally final. *Ma Thein Tin v. Htoo*, 1923 Rang. 156.

welcomed, though the limited extent of that welcome was made very plain a few months later in the Canadian refusal<sup>1</sup> to accept any obligations under it, on the score that Canada had not been allowed the chance of participating in the negotiations. British action in Egypt was accorded the usual approval, and satisfaction expressed at the solution at Washington of the question of rivalry in construction of battleships and of relations with Japan, to which cordial goodwill was expressed. It was agreed also that the desire of the United States for aid in combating the liquor traffic on her coast should be accorded by waiving the right to insist on a three-miles limit. The attitude of the United States towards Mandates of the 'C' class was discussed, and also—quite uselessly—the vexed problem of the New Hebrides. The question of signature and ratification of treaties arising from the signature of the Halibut Fisheries Treaty between Canada and the United States in March was considered, and an agreement, summarized above, arrived at.

(d) *Imperial Defence*

The utterly anaemic character of the proceedings was revealed in the fullest degree in the discussions of defence. Naval, military, and air matters were all fully discussed, but the Conference actually thought it worth while putting on record the platitudes that it was necessary to provide for the defence of the trade of the Empire, and that it was for the Parliaments to decide the nature and extent of any action to be taken by them. Venturing into further detail, it put on record that each portion of the Empire represented at the Conference had primary responsibility for its local defence; that adequate provision was necessary to safeguard the maritime routes of communication of the Empire; that the mobility of fleets should be secured by the provision of naval bases and of facilities for repair and fuel; that equality of naval strength with that of the greatest foreign power was essential as accepted at the Washington Conference; that co-operation of aircraft should be aimed at by a common organization, training, and the use of common manuals, patterns of arms, equipment and stores, save as regards type of aircraft. Note was taken in the light of these principles of the deep interest of the Common-

<sup>1</sup> *Parl. Pap., Cmd. 2146.*

worded in several ways. A declaration is prayed for that the plaintiff is the owner of the property, a declaration that the property should not have been attached in execution of a certain decree, that the order passed in claim proceedings should be vacated, that the court auction sale in pursuance of the attachment is not valid, as also the execution proceedings, that the property be reconveyed by the auction-purchaser to the plaintiff, that the property be delivered over to the plaintiff, etc. These prayers amounting to the establishment of title and possession have been construed by the several High Courts in various ways as falling under one or the other sub-paragraphs of s. 7. But the essence of such class of suits is this. A person's property is wrongfully attached, and his application to have it raised is not granted. That order is not appealable and conclusive unless a regular suit is filed within a year. The plaintiff files such a suit praying may be, for ever so many reliefs, all turning round the correctness of the summary order disallowing the claim. If that order is vacated, the other remedies follow as a matter of course and are simply consequential reliefs. It is only after this view has been stressed upon by the Privy Council in *Phul Kumari v. Ghanshyam Misra*, 35 C. 202, referred to below, that the conflict of decisions between the several High Courts as to the nature of suits under O. 21, r. 63, Civil Procedure Code and consequently the fee payable thereunder, can be said to have been set at rest. For a recent decision of the Madras High Court on the point, see *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716=64 M. L. J. 568=1933 Mad. 439.

**Court-fee.**—*Phul Kumari v. Ghanshyam Misra*, 35 C. 202 (P. C.) is the leading case on the subject and sets at rest several conflicting decisions on the point. The principles have been clearly enunciated therein. That was a regular suit to set aside a claim order. Their Lordships observed thus: "We are satisfied that there is in the statute no general or overriding reference to value. The terms of sub-section 1 of Article 17 contain no reference to value. \* \* \* Awards may be of the value of Rs. 10 or of Rs. 10,00,000; and yet no distinction is made. In short the statute, for good reason or bad, has dealt with certain actions irrespective of value; and the present is one of them." A fixed fee is leviable. The court-fee payable upon the plaint in a suit by a person whose claim to property attached in execution has been determined is Rs. 10 under this Article, whether the claim is dismissed for default or after investigation. *Satindra Nath v. Shiva*, 1922 Cal. 166=64 I. C. 713; See also *Maung Tun Thein v. Maung Sin*, 12 Rang. 670=1934 Rang 332.

**Property dealt with in two orders.**—Where the same property is the subject of two different proceedings in two different suits, and adverse orders are passed against the plaintiff in both, the plaintiff has to pay separate court-fees under this Article in respect of each order. *Naraindas v. Pevanandbai*, 1935 Sind 129.

For valuation for jurisdiction see *infra*.

especially in view of the desire of General Smuts to turn the Germans of South-West Africa into British subjects.<sup>1</sup> A minor difficulty was reported by the Commonwealth as to the constitution of the Committees of Inquiry which are required for the revocation of certificates of naturalization, and which must under the Imperial Act be presided over by a person who holds, or has held, high judicial office. The Commonwealth definition of such office had proved inconvenient, and the Conference was willing that the Commonwealth should modify the definition<sup>2</sup> if, after further examination of the practice and of the British usage, it deemed it necessary so to do. As to nationality of married women<sup>3</sup> the Committee merely recommended that a woman whose marriage is for all intents and purposes at an end should be able to obtain readmission to British nationality. Discussion of proposals to secure that legal marriages with foreigners should not be held invalid in their countries by reason of some formality omitted led to the realization that the steps taken to secure observance of the *Marriage with Foreigners Act*, 1906, represented all that could be done.

#### § 6. *The Imperial Economic Conference of 1923*

More serious work was accomplished in the field of economics. The Imperial Government had now taken the initiative in pressing for oversea settlement, and its proposals were duly adopted, though nothing serious came out of them, and on 8 April 1925 the Imperial Government was driven to offering to the Commonwealth a scheme<sup>4</sup> under which £34,000,000 is available for loan to the State Governments at a very low rate of interest in order to promote settlement or public works likely to encourage settlement, on the understanding that, for each

<sup>1</sup> See the memorandum of 23 Oct. 1923, *Parl. Pap.*, Cmd. 2220. Naturalization was duly accorded in 1924 by Act No. 30, but it, of course, had no Imperial validity in the absence of an Act of the Imperial Parliament.

<sup>2</sup> The matter is not dealt with in Act No. 10 of 1925.

<sup>3</sup> See the report of the Joint Committee, *Parl. Pap.*, H. C. 115, 1923. Following on the resolution of the House of Commons, Feb. 1925, a resolution was passed in the Commonwealth House of Representatives, 25 Feb. 1926, in favour of facultative retention of her nationality by a British woman on marriage, but Mr. Bruce made it clear that the nationality of children must follow that of the father; *Parl. Deb.*, 1926, pp. 685 ff., 1138 ff.

<sup>4</sup> *Parl. Pap.*, Cmd. 2640.

*The Full Bench decision.*—Again the question came up in *Damodaran v. The Board of Commissioners for the Hindu Religious Endowments*, 58 M.L.J. 494, before Walsh, J., who referred the question to a Full Bench which answered thus: "The point referred to us for decision is, what is the proper court-fee payable in respect of an application filed under s. 84 (2) of the Madras Hindu Religious Endowments Act, (II of 1927) to modify or set aside a decision of the Hindu Religious Endowments Board under s. 84 (1) of the Act? Under Sch. II of the said Act the court-fee payable on such an application is the fee leviable on a plaint under Art. 17, Sch. II of the Madras Court-Fees Amendment Act of 1922. The Madras Court Fees Amendment Act contains three Articles, namely, 17, 17-A and 17-B. The short point for consideration is whether Arts. 17-A and 17-B must be read as parts of Art. 17 or as independent Articles. The view taken by Philips and Odgers, JJ., in *Godasankara Valia Rajah v. Board of Commissioners, Hindu Religious Endowments, Madras*, 56 M. L. J. 113, is that Arts. 17-A and 17-B must be read as parts of Art. 17. The learned Judges observe that when the whole Article is referred to, it must include its component parts and it cannot be read as meaning Art. 17 alone. The ground of their decision seems to be that Arts. 17-A and 17-B numbered as they are in the Act following Art. 17 with various sub-clauses must really be treated as clauses in Art. 17, as otherwise none of the clauses of Art. 17 will cover a case like the present. Strictly speaking, none of the sub-sections to s. 17-A or s. 17-B covers a case like the present as the application is to set aside an order of the Religious Endowments Board and not for any declaratory decree. This decision has been dissented from by Ramesam and Venkatasubba Rao, JJ., in *Sundara Aiyar v. Commissioners, Hindu Religious Endowments Board*, 52 Mad. 388. The learned Judges go into the matter in great detail and give their reasons for coming to the opposite conclusion. Ramesam, J., refers to the practice of numbering sections and sub sections of enactments and also discusses the way in which new provisions are introduced where the intention is to add a clause or a sub-clause and where the intention is to introduce a new section without altering the order or the numbers of the existing sections. The learned Judge also deals with the nature of the relief sought and the way in which it is described in Sch. II of the Act. He is of opinion that Art. 17 stands by itself, that Arts. 17-A and 17-B are really separate Articles and that they cannot be read together for the purpose of determining the court-fee. Venkatasubba Rao, J., also comes to the same conclusion as to the construction of Art. 17. We think that, in construing an enactment like the Court Fees Act, it is not for us to see what the legislature intended, if the meaning of the Article is plain. We agree with the view taken by Ramesam and Venkatasubba Rao, JJ., for the reasons given by them in their judgments. We may also add that the application contemplated in s. 84 (2) of the Madras Hindu Religious Endowments Act is one to modify or set aside a decision of the Board regarding the

from 2s. the preference on wines between 30° and 40°, and raising from 30 to 50 per cent. the preference on the surtax of 12s. 6d. on sparkling wines. These advantages, however, for the consumer were counteracted by new duties of 5s. a cwt. on raw apples, 10s. a cwt. on foreign canned salmon, lobster, crayfish, and crabs, a like duty on honey, and 6d. a gallon on lime and lemon juices, in all these cases the Empire product entering free. The folly of offering and of accepting these burdens—which would have done hardly any good to the Dominions, save in the minor forms of helping on the dried fruit industry in Australia and Canadian salmon packing—was seen when the Government of Mr. Baldwin was defeated at the election of 1923 fought on the wide issue of protection, to which Mr. Baldwin had moved after his experience at the Conference. The duties were rejected by the Commons in 1924, though as regards those merely giving preference on existing duties—which was the policy of 1919—by a minute majority, and after the fall of the Labour Government Mr. Baldwin's Government in 1925 was compelled to drop all the new duties, and to offer in lieu £1,000,000 to aid in marketing Dominion produce,<sup>1</sup> a step which at once evoked a demand that help should be afforded to marketing British agricultural produce. In 1926 the further step was taken of stabilizing the Dominion preferences for ten years.<sup>2</sup>

There was unanimity in a harmless resolution urging the use of Empire materials and products by all Governments, including those of the States, provinces, and local bodies.

A sensible step was taken in putting at the service of the Dominions both the diplomatic commercial officers and the consular officers abroad for trade purposes, in the same manner as the Imperial Trade Commissioners had been made available for consultation. It was agreed that, where inquiries referred to matters in Europe, they should pass through the Department of Overseas Trade, in other cases they should go direct. The

<sup>1</sup> The Committee with Dominion representatives was duly set up in full operation in 1925.

<sup>2</sup> Such action is, of course, liable to variation by any subsequent Parliament and is constitutionally undesirable on a party vote. Mr. Churchill's tergiversations in pursuit of office were amusingly portrayed in the Commons on 21 July 1928.

consequential relief and should have paid the proper court-fee as in such a suit. He is clearly entitled to have the case made by him in the plaint tried by the courts. The plaintiff cannot be deemed to have asked for consequential relief when he studiously refrains from asking it. *Radakrishna v. Ram Narain*, 931 All. 369; *Brij Gopal v. Suraj Karan*, 1932 A. L. J. 466=1932 All. 560, *Mahomed Ismail v. Liyaqat Husain*, 140 I. C. 191=1932 A. L. J. 165=1932 All. 316; *Ishwar Dayal v. Amba Prasad* 1935 A. L. J. 498=1935 All. 667; *Adeshwar Prasad v. Badami Devi*, 148 I. C. 908=11 O.W.N. 617=1934 Oudh 212. Thus a suit for declaration that the entire family property in the hands of the plaintiff as the head of the joint family belonged equally to the plaintiff and the male defendant and that certain documents executed by certain deceased members of the family did not affect the jointness of the family, falls under this Article. The court need not go into the question whether the suit is bound to fail for not having prayed for consequential relief. *Brij Gopal v. Suraj Karan*, 1932 A. L. J. 466=1932 All. 560. So also a suit by the plaintiff for declaration that the hypothecation bond executed by his father in favour of the defendant is unenforceable and that the family property mortgaged by that deed is not saleable in execution of an *ex parte* decree for sale obtained by the defendant on the basis of that mortgage, *Ishwar Dayal v. Amba Prasad*, 1935 A.L.J. 498=1935 All. 667. The entire relief is one declaratory relief, as on the date of the suit, the hypothecation bond has merged in the decree, and the relief for a declaration that the family property is not saleable in execution is not a consequential relief within s. 7 (iv) (c). *Ibid.* See also *Rattan Lal v. Allahabad Bank, Ltd., Lahore*, 1935 Lah. 122. The various forms of action have been set out and discussed under s. 7 (iv) (c) *supra*. See commentaries thereunder.

**The following cases have been treated as suits for bare declaration.**

1. *Summary order*.—Suit for a declaration that the plaintiff's property is not attachable in execution of a certain decree. This comes under the heading of a suit to set aside a summary decision. *Govind Nath v. Gajraj*, 13 A. 389.

2. *Binami transaction*.—Suit for a declaration that plaintiff is true owner of the decree and for a direction to the ostensible decree-holder to transfer the decree to the plaintiff is only a suit for declaration, the other prayer being only a surplusage. *Ganesh Lal v. Beni Pershad*, 9 I. C. 673.

3. *Recovery of money*.—Where money is sought to be recovered from a party who is ready to pay it to the rightful owner, the suit is deemed to be one for a bare declaration only. *Mt. Uttan Devi v. Dina Nath*, 1923 Lah. 359=75 I. C. 774. Where the suit comprised a claim for declaration of a charge on certain property for a sum of money which the plaintiff had to borrow for her maintenance it was held that the claim was really one for arrears of mainten-



some Colonies, and a more extensive use was urged, and another form of certificate where duty was levied on invoice value was commended for general adoption, as well as a simple certificate in respect of postal packages. The conclusions of the League of Nations International Conference on Customs and other similar Formalities of October 1923 was recommended for adoption. A proposal for Empire currency bills was discussed, but wisely regarded as needless in view of the gradual approach of the currencies to parity and the probably ultimate disappearance naturally of difficulties of exchange, though temporary remedial measures were suggested. A scheme proposed for the future administration of the Imperial Institute and the Imperial Mineral Resources Bureau was approved with modifications and the payments of the Dominions decided upon, ranging from £2,000 for Canada to £200 for the Irish Free State and Newfoundland. It was agreed also that co-operation in technical and scientific research was desirable.

A more novel proposal was approved, the liability of Governments engaging in trade to taxation in respect of trade profits or property by the Legislature of any part of the Empire in which it operated. It was agreed also that the Dominion would support the application of the same principle to foreign Governments within British jurisdiction and vice versa. Approval was also given to the draft agreement to terminate the immunity of State-owned ships<sup>1</sup> which had been arrived at by the International Maritime Committee at Gothenburg in August, under which trading ships, though Governmental, have no privilege, while Governmental ships are made liable to suit in their own Courts only in respect of collision damage, with the exception of acts done in exercise of belligerent rights.

One matter arousing sharp feeling was debated by the Conference. Canada had been definitely promised during the war pressure that her cattle would be admitted alive for store purposes into the United Kingdom, but by an inexcusable piece of bad faith Governmental action to redeem the promise was delayed in order to meet the wishes of British farmers, for whose benefit they had been kept out under a ludicrously false allega-

<sup>1</sup> See Garner, *B. Y. B. I. L.*, 1925, pp. 128 ff.; N. Matsunami, *Immunity of State Ships* (1924); and now the Diplomatic Conference of April 1926 (*L. Q. R.* xlii. 308 ff.); Dicey and Keith, *Conflict of Laws* (ed. 4), p. 208.

*Goswami v. Gridharji*, 20 All. 120, or where it is with a Receiver, *Vedhanayaga Mudaliar v. Vedammal*, 27 M. 591. See also cases under heading "Recovery of property in *custodia legis*."

11. *Reversioner's suit*.—Declaration by a reversioner that a will is not binding. *Hakim v. Mt. Mahtab Kour*, 109 P. R. 1893.

12. *Injunction*.—Suit by a plaintiff that he is the next heir to an inalienable estate, which the then holder was about to sell and for a decree preventing him from selling it, was held to be for declaration and consequential relief and not one for a simple declaration. *Pratab Singh v. Nand Lal*, 1928 Nag. 243=100 I. C. 163.

13. *Setting aside deed*.—A Full Bench of the Allahabad High Court has held that a suit for the cancellation of an instrument under s. 39, Specific Relief Act falls neither under s. 7, cl. (iv) (c) nor under Art. 17 (iii) of Sch. II but falls under the residuary article Sch. I Art. 1. *Kalu Ram v. Babu Lal*, 54 All. 812=139 I. C. 32=1932 A. L. J. 684=1932 All. 485 (F. B.). See also *Suraj Ket Prasad v. Chandra*, 1934 A. L. J. 955=1934 All. 1071; *Akhlaq Ahmad v. Mt. Karam Ilahi*, 1935 A. L. J. 133=1935 All. 207, where it has been held that even a suit for declaration falls under Art. 1 of Sch. I when it implies a prayer for cancellation. While in cases where a declaration alone is sought, a stamp of Rs. 10 is sufficient, in a case under s. 39 of Act I. of 1877 (Specific Relief Act) in which not only is a declaration sought, but it is further asked, that the document shall be delivered up, cancelled and its registration set aside, an *ad valorem* fee must be paid. *Kuber Saren v. Reghuber*, 5 Luck. 235=1929 Oudh 491. Where the plaintiff prays for a declaration that a deed executed by him is ineffective and inoperative as against him, on the ground that he was made to execute it because of coercion, undue influence and fraud exercised upon him alleging that he is still in possession of the properties covered by the deed falls under this Article. *Raunaq Ali v. Imamunnissa*, 138 I. C. 147 (Oudh). See also *Pateraji v. Rdhika Bakksh*, 142 I. C. 699=1933 Oudh 127; *Abdul Samad Khan v. Anjuman Islamia*, 1933 A. L. J. 1537. Where the plaintiff who was not a party to a deed sued to have it declared that a deed was null and void and there was no prayer for the document being delivered up after cancellation, it was held that the suit was for a mere declaration and was leviable to court-fee on that basis. *Daya Shanker v. Mahomed Ibrahim Khan*, 141 I. C. 798=1933 Oudh 116. Where the plaintiff filed a suit alleging that he was a minor at the time of the execution of the mortgage deed by him and that therefore the mortgage deed was void as against him, it was held that all that was necessary for the minor was to ask that the document be declared to be void as against him and that no prayer for consequential relief as to setting aside the document was necessary and that the suit need not be treated as involving such a prayer. *Yu Hock Tun v. Yu Hock*, 11 Rang. 66=1933 Rang. 109. So also where the plaintiff alleging that a certain deed was forged and that in spite of his objection the Registrar

should depend on reciprocity. It was recognized that from many aspects the matter fell within provincial and State jurisdiction and, therefore, could not be effected by the Dominions of their own powers.

Finally, it was agreed to constitute an Imperial Economic Committee on which the United Kingdom should have 10 members, the Dominions 2 each, the Colonies 2, and India 2, 'to consider and advise upon any matters of an economic or commercial character, not being matters appropriate to be dealt with by the Imperial Shipping Committee, which are referred to it by any of the constituent Governments, provided that no question which has any reference to another part of the Empire may be referred to the Committee without the consent of that part of the Empire'. The resolution was not accepted by Canada, and in 1924 it was rejected by the Labour Government in the United Kingdom. The fall of that Government from power was followed by the decision to act on the resolution, and, as Canada agreed to accept the Committee on the clear understanding of the limited character of its powers, the Committee was duly constituted in 1926.<sup>1</sup> Like the Imperial Shipping Committee it rests on the principle of a purely advisory body dealing with definite references, and claims no executive power.

#### § 7. *Proposals for Conferences in 1924, 1925, and 1926*

The unconstitutional action of the Labour Government in 1924 in recognizing the Russian Government without consultation with the Dominions and its attempt to ignore the rights of the Dominions in respect of the Reparations Conference, a project defeated by the stern remonstrances of the Canadian Prime Minister, resulted in a feeble effort to reopen the question of the Constitutional Conference proposed in 1917 and abandoned in 1921 to the disgust of Sir R. Borden. A telegram of 23 June 1924<sup>2</sup> suggested that as a preliminary to a possible

<sup>1</sup> See the Secretary for the Dominions, House of Commons, 31 March 1926; £500,000 was provided for 1926-7, thereafter £1,000,000. Due regard was to be had to British agriculture, and a member was added for that purpose to the body. The actual administration of the grant was entrusted to an Imperial Economic Commission, acting under the Secretary of State, who was responsible for its action.

<sup>2</sup> *Parl. Pap.*, Cmd. 2301.

being attached and sold in execution of the plaintiff's decree is purely a declaratory suit without consequential relief, as the second declaration is implied in the first and is not a consequential relief. *Ram Dayal v. Baldeo Prasad*, 130 I. C. 344 = 1931 Oudh 72.

14. *Declaration about title to property*.—A suit for declaration that a certain property belongs to the plaintiff and is not liable to be sold in execution of a mortgage decree passed in a suit to which the plaintiff was not a party does not involve any consequential relief and comes within this Article. *Sri Ram v. Mathura Prasad*, 1925 Oudh. 500.

15. *Declaration about royalty*.—A suit for declaration that a plaintiff is liable to pay *Achu palisha* or royalty at a rate lower than that claimed by the defendant does not fall within S. 7, Cl. 1 or 4 (c). It is simply a suit for a declaratory decree without any consequential relief. *Rayorappankutti Nambiar v. Kalliyat Nambiar*, 46 M. L. J. 377 = 1924 Mad. 621.

16. *Third party in possession*.—Where the property is in the possession of a third party who was a tenant under the plaintiff's predecessor in title, a suit for declaration by the plaintiff against the defendant, who is not in possession, but throws obstacles in the way of the plaintiff getting attornment from the tenant is maintainable and the plaintiff is not bound to sue for possession. *Gian Chand v. Bhagwan Singh*, 32 P. L. R. 745.

**Reduction of maintenance**.—A suit for reduction of rate of maintenance awarded under a previous decree on the ground of change of circumstances is not a "suit for maintenance" within s. 7 (ii) nor a "suit for cancellation of decree" within s. 7 (iv-A) but a suit falling under Art. 17-B (Mad.) (corresponding to Art. 17 (3) of the main Act). *Rajammal v. Thyagaraja Ayyar*, 69 M. L. J. 202 = 42 L. W. 42 = 1935 Mad. 655.

**Priority**.—Where one of the defendants in a mortgage suit appeals, claiming that he is entitled to priority over the other defendants, who were adjudged prior mortgagees by the lower court, the relief sought is not declaratory and does not come within Art. 17 (iii), and *ad valorem* fee is payable, *Kundan Lal v. Duli Chand*, 54 All. 347 = 1932 A. L. J. 45 = 1932 All. 221. See also under Art. 1 of Sch. I. Where in a suit for sale on a mortgage, in which some puisne mortgagees are impleaded, a decree is passed ordering that the balance of the sale proceeds remaining after paying off the plaintiff mortgagee should be paid to the puisne mortgagees and the surplus if any should be given to the mortgagor, and the mortgagor appeals against the portion of the decree in favour of the puisne mortgagees, *ad valorem* court-fee is payable on the amount due on the mortgage and not a fixed fee. *Kharaiti Ram v. Chuni Lal*, 146 I. C. 1003 = 1933 Lah. 954.

### **Declaration and consequential reliefs.**

1. *Exoneration from liability*.—When from a decree for recovery of money passed against a Hindu father and his son on a

to have a preliminary Conference, when the fall of the Labour Government terminated the whole scheme, for the new administration was not prepared to endorse the suggestions of its predecessor, and thought that the arrangements of 1923 as to treaty negotiation should be allowed time to show whether in operation that afforded any assistance in solving the problems of the situation.

The Imperial Government, however, very shortly<sup>1</sup> after endeavoured to secure a Conference in March 1925 to consider the Geneva Protocol of 1924 for the pacific settlement of international disputes. The replies of the Dominions were eloquent of the difficulties of effective consultation personally owing to the inconvenience of distance, and eventually the matter had to be adjusted by correspondence, the Dominions one and all demurring to the Protocol. The substance of their views, apart from fear lest their position as to immigration should be weakened, was essentially that the effort to tighten the clauses of the Covenant would tend to lead rather to war than to promote peace, the Irish Free State in special hinting doubt as to the wisdom of seeking to stereotype in any way the peace settlement. It proved naturally equally impossible for the Dominions to take part effectively in the discussion of the Locarno Pact, but it was recognized that this at least must be made a matter of verbal consultation, and by putting great pressure on Canada it was arranged to convene a meeting in October 1926.

In view of the summoning of the Conference the Canadian Parliament was invited by Mr. Mackenzie King on 21 June<sup>2</sup> to express approval of the rules of 1923 as to the negotiation of treaties and their ratification, involving the consultation, representation, and consent of all the parts of the Empire involved, and at the same time to place on record its view that before the Government of Canada advised the ratification of 'any treaty, convention, or agreement involving a military or economic

<sup>1</sup> *Parl. Pap.*, Cmd. 2458; P. J. N. Baker, *The Geneva Protocol* (1925); D. H. Miller, *The Geneva Protocol* (1925); K. Linnebach, *Die Sicherheitsfrage* (1925); G. Glasgow, *From Dawes to Locarno* (1925).

<sup>2</sup> Cf. the debate, 22 March 1926, on Mr. Woodsworth's motion in the Commons that Canada should refuse to accept any responsibility for complications arising from the foreign policy of the United Kingdom.

12 Pat. 261=1933 Pat. 224. Where the money is in court deposit, the plaintiff cannot frame the suit regarding it as one for declaration and consequential relief. A relief for injunction restraining the defendants from applying for the payment of the sum is both unnecessary and superfluous. The proper relief that should be prayed for is one for declaration alone and court-fee that is leviable is one under Art. 17-A of Sch. II. *Ponnuwami Nadar v. The Secretary of State for India in Council*, 68 M. L. J. 327=41 L. W. 702=1935 Mad 318.

On a reference by the Land Acquisition Officer, the District Judge held that a Hindu widow was entitled to life-interest in the compensation money awarded and ordered under Sec. 32 of the Land Acquisition Act that the money should be deposited in the Imperial Bank. A rival claimant appealed to the High Court, claiming that the compensation money was payable to him alone. It was held (Wallace and Cornish, JJ.) that the possession and the control of the compensation money being in *custodia legis*, a mere declaration by the High Court with a direction that the money was not any longer to be in trust for the widow but was to be handed over to the appellant was sufficient and court-fee was payable under this Article as for a mere declaration and not *ad valorem*. The case in *Mahalinga Kudumban v. Theetharappa Mudaliar*, 56 M. L. J. 387, was distinguished on the ground that there the successful claimant had not the property held in trust for him by the court, but was entitled to immediate payment, and so *ad valorem* fee was payable in the appeal there. *Thammayya Naidu v. Venkataramanamma*, 55 Mad. 641=62 M. L. J. 541. No doubt if in this case any interest on the principal had been paid out to the widow, the appellant if he sought to recover that also would have to pay *ad valorem* fee on that, but there was no such claim. See also *Girdarilal Ratanlal v. Palaniappa Mudali*, 1929 Mad. 572 and *Mt. Uttam Devi v. Dina Nath*, 1923 Lab. 359, where the suit moneys were in a bank, which was willing to pay them to the rightful owner, and the defendants were not in possession of them. In *Shidappa Venkatrao v. Rachappa Subba Rao*, 36 B. 628 (638) subsequently affirmed on appeal in 43 B. 507 (P. C.) where some of the suit properties were in the possession of the Collector as agent of the Court of Wards and the plaintiff had asked for an injunction as well as a declaration against the defendant, it was held that the properties being in the possession of the Collector, it was not necessary for or allowable to the plaintiff to ask for an injunction. See also *Saburi Panday v. Ram Khelavan*, 1924 Pat. 385, where the property of a lunatic was in the custody of the defendants as managers appointed by the court, and the heir of the lunatic sued for a declaration that he was entitled to the property, and it was held that the suit was proper, that the plaintiff need not pray for possession and that a court-fee of Rs. 10 was payable under Sch. II, Art. 17.

**Reversioner's claim to have the compensation money deposited in court.**—An award having been made in favour of an

made to foreign powers or the League as to the independence of the Dominions in international law. Mr. Watt more unkindly said that if this proposal were meant as a gesture it would result as a jest ; foreign States would properly persist in treating the Empire as a unit of international law. Mr. Hughes homologated this view, but was decidedly in favour of the acceptance of the Locarno Pact, and he demanded that all parts of the Empire should contribute to defence, Britain, however, at a higher rate ; his remarks as usual were a reproach in veiled form of the attitude of Canada. The Leader of the Opposition asserted that the Labour party wished to leave things as they were ; they did not favour closer connexion with Imperial foreign policy or concern with the affairs of Europe, an attitude which, it was pointed out, had support even in the Governmental press. If there arose an emergency, then Australia must be free to decide her action and doubtless she would be as ready to aid as in 1914 in a just cause. He insisted also that Labour was not in principle inimical to immigration, but it was determined that Australian standards should not be lowered, and it was clear that he did not believe that this ideal was really compatible with any serious increase of the population of the Commonwealth.

The discussions in the Dáil of the Irish Free State on 2 and 3 June exhibited in a clear form the aspirations of the Minister for External Affairs. He insisted that the Free State was an independent sovereign State, though he admitted that it might be well to induce the Imperial Government to notify this fact to those foreign powers which seemed unable to appreciate a fact so obvious in the eyes of the Minister. He instanced as cases of inferiority the position of the Governor-General as an agent of what with pardonable inaccuracy he called the Colonial Office.<sup>1</sup> He cited also the limits on the territorial powers of the Free State which had proved inconvenient in the matter of fishery regulations. Further, he declared that it must be made clear that in all matters affecting the Dominion it was the absolute right of the Dominion to have the last word. His views, therefore, bore a considerable similarity to those of the Prime Minister of the Union of South Africa, whose attitude was

<sup>1</sup> The channel of communication via the Governor-General was a special source of dissatisfaction.

its subject-matter related only to the costs of the suit. The decision in *Harbhagwan v. Amar Singh*, 5 Lah. 137, is to be explained on this principle. *Neko Tewari v. Kishen Prasad*, 3 Pat. 640, does not offend against this principle, as there the suit was parctically for declaration alone, the claim for temporary injunction having dropped out in the course of the suit and being also not legitimately a part of the plaint, as it has to be sought by an interlocutory petition. See observations in 54 All. 553 at 555. This view leads to the logical result that where the suit does not come within this Article, but under Sec. 7 for purpose of court-fees, then the memorandum of appeal in such a suit even though its subject-matter relates only to declaration or any other relief mentioned in this Article, cannot be charged with the fixed court-fee mentioned here, but has to be charged *ad valorem* under Art. 1 of Sch. I. See *Kundan Lal v. Duli Chand*, 54 All. 347 and *John v. Suraj Bhan*, 54 All. 553. But see contra, *Girijanand v. Sailajananad*, 23 Cal. 645, *Rup Chand v. Fateh Chand*, 33 All. 705 and several other cases, where it was held that the memorandum of appeal was chargeable under this Article even though the suit did not come under it. These views appear to be irreconcilable, and the position seems to require legislative interference.

**Appeal in declaratory suit.**—Where in a suit by a reversioner for declaration that a release deed executed by the 5th defendant, the widow in favour of defendants 1 to 4 would not be binding on the ultimate reversioners, the trial court passed a decree declaring that the ultimate reversioners would not be bound by the release deed but that they would be bound to pay defendants 1 to 4 a certain amount which had been spent to the benefit of the last male holder's estate, and the defendants 1 to 4 appealed impugning the declaratory decree and also contending that in any event the decree should be made conditional on payment by the ultimate reversioners of a larger amount than that awarded by the Trial Court, it was held that the appellants were bound to pay court-fee under Art. 17-A (corresponding to Art. 17 (iii) of the main Act) only in respect of the declaration sought to be avoided and not also on the amount claimed by them in the alternative, *Palaniappan Chettiar v. Settichi*, 63 M. L. J. 822=36 L. W. 828.

**Cross-objection in a declaratory suit.**—The omission of the words "cross-objection" from Sch II, Art. 17 (iii) is a mere clerical error and it is no doubt intended by a memorandum of appeal a cross objection should also be included. A cross objection in a declaratory suit where no other relief is asked for, does not require *ad valorem* court-fees. There is no essential difference from the point of view of court-fee between a cross-objection and an appeal and there is no reason why a person who files a cross-objection should have to pay *ad valorem* court-fee, whereas if he filed an appeal, instead of a cross-objection he will not have to pay that court-fee. *Surendra Singh v. Gambhir Singh*, 152 I. C. 196=1934 A. L. J. 743=1934 All. 728. But there is a conflict of decisions on the point as to which see the cases cited under Sch I, Art. 1.



a favourable impression of his honesty of purpose on the British public. The Conference, of which too much had perhaps been expected, naturally proved unable, in the brief time at its disposal and with the distractions of social engagements and other affairs, to accomplish anything striking, its main value lying as usual in the exchange of views between the statesmen of the Empire.

(a) *Constitutional Questions*

On this issue important results had been expected, and General Hertzog indicated his desires by suggesting as the doctrine which should guide the Conference, 'In principle, unrestrained freedom of action to each individual member of the Commonwealth; in practice, consultation with a view to co-operative action wherever possible'. He insisted that South Africa did not possess an implicit faith in her full and free nationhood, which he desired to see internationally recognized, and he urged that the issue of status should be seriously considered. In remarkable contrast was the attitude of Mr. Monroe for Newfoundland; he insisted that Newfoundland was perfectly satisfied with its present status, did not even ask to be consulted on foreign policy, and felt assured that, if a war arose, it would come in convinced that it was fighting in a just cause. Mr. Cosgrave was guarded in expression and the representatives of the other Dominions did not press the question. The result accordingly was that the Conference, on the advice of the Committee on Inter-Imperial Relations, laid down two principles, in themselves unexceptionable, but decidedly vague. The position of the group of self-governing communities composed of Great Britain<sup>1</sup> and the Dominions was defined as follows: 'They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations'. The definition may be admired for its intention rather than for its accuracy as a description of fact as opposed to ideal, and the Conference clearly recognized this fact by the important qualification that

<sup>1</sup> The insistence on ignoring Northern Ireland is due to desire to gratify the Irish Free State. It is rather stupid. See now 17 Geo. V, c. 4, s. 2.

In the first place all these various types of suits regarding adoption may be divided into two broad divisions *viz.* (a) cases where, while praying for a relief relating to an adoption the suit refers to a right to property, may be, as a consequential relief and (b) where the relief is as to the status of the alleged adopted person.

The law on the question could be stated thus;

(i) Where the relief is not confined to the question, *viz.*, the validity or otherwise of the adoption and adoption alone, but relates also to immoveable property, then it is a suit for a declaration with consequential relief and comes under s. 7 clause (iv) (c). *Ugramohan v. Lachmi Prasad*, 1923 Pat. 100 = 56 I. C. 422; *Ganpat Rao v. Lakshmi Bai*, 43 I. C. 64.

(ii) A suit to set aside an adoption without any other or further relief falls under Article 17 clause (v) though there is a question of title to property involved but no relief therefor is prayed. *Ganpat Rao v. Lakshmi Bai*, 43 I. C. 64.

(iii) But any other declaratory suit regarding an alleged adoption (subject to item 2 *supra*) and having no relation to any title to immoveable property or otherwise is a suit for a declaration pure and simple without consequential relief and the fee leviable is under Article 17 clause (iii). Of course this is subject to the local amendments of the Act, where in Madras for instance the suits catalogued under Article 17-A (iii) are

(i) to obtain a declaration that an alleged adoption is invalid

(ii) or never in fact took place or

(iii) to obtain a declaration that an adoption is valid.

All these classes of cases could not therefore in Madras be relegated to Art. 17-A (i) regarding pure and simple declaration but there is no difference in court-fee payable under either of those clauses.

## **Clause VI. Suits where it is not possible to estimate at a money value the subject-matter of the suit.**

**Scope of the clause.**—Article 17 has been split into several Articles in Madras and Bombay. In Madras the uniform fixed fee of Rs. 10 provided in the main Act has been replaced by different fees depending on the forum where the suit or appeal is laid.

This clause provides for the cases where the nature of the subject-matter of suit is such that the same could not possibly be estimated at a money value. The subject-matter must be incapable of valuation. The fact that it is difficult to assess the value or the estimate could only be approximate as in a suit for accounts could not bring the suit within this Article. *Banwari Lal v. Daya Shanker*, 1 I. C. 670; *Trinayani Dasi v. Krishna Lal*, 39 C. 906 = 14 I. C. 724; *Ramakrishna Reddi v. Kota Reddi*, 30 M. 96 = 16 M. L. J. 458. See also *Sabir Husain v. Farzand Hasan*, 54 All. 608 = 138 I. C. 622 = 1932 All. 406 (Appeal

Minister for External Affairs or Prime Minister of each Dominion corresponded direct with the Secretary of State for the Dominions or Foreign Secretary on all other matters, as may be preferred in the case of Ireland. As it is proposed that the Governor-General should be supplied with copies of all documents of importance and be kept as fully informed as to Cabinet decisions and public business as is the King in the United Kingdom—a thing which at present is certainly not the case in Dominion usage—it would *prima facie* seem that the innovation of superseding the Governor-General has not much point or utility. What, it may be asked, is the use of having a Governor-General who is fully informed of all matters and a British representative—whether styled High Commissioner or otherwise—who represents British views and reports Dominion views? The answer in theory is clear enough. The two cases should be quite distinct. The Governor-General should be essentially a piece of the local machinery, who is not constitutionally in a position to report on the views of his Ministers to the Imperial Government, and who in consequence may properly be fully aware of their actions and plans. On the other hand, reports to the British Government should emanate from an officer who is not concerned with the internal government of the country, but merely with its views on external matters, and who should serve, like an Ambassador in a foreign country, as a means of keeping the two countries concerned in close personal touch. He would thus form a counterpart to the Dominion High Commissioner in London, but his existence would place the Imperial and the Dominion Governments on the proper footing of equality. Clearly this is a satisfactory theory of the position, but clearly also with the reduction of his functions to those of a mere head of the local Government, there would be little attraction for a man of political merit or outstanding character in the United Kingdom to seek to be Governor-General, and the last might therefore properly be conferred on a local nominee such as Sir R. Borden in Canada. In most of the Dominions it may fairly be said that the time is hardly ripe for the appointment of British High Commissioners, and it may well be that the Governor-General may still be held to serve as a useful channel of communication. It may be added that Mr. Baldwin on 25 November had to assure the

*Pillai and Nagasami Ayyar*, 67 M. L. J. 688=152 I. C. 679=1934 Mad. 714 cited and commented on under s. 7 cl. (v).

**Temple.**—It has been held that a temple can have no market-value and a suit for recovery of possession of same comes under this Article. *Rajagopala v. Rama Subramani*, 18 L. W. 326=1924 Mad. 19. See also *Parsothamanad Giri v. Mayanand Giri*, 54 All. 869=1932 A. L. J. 777=1932 All. 593.

**Religious and Charitable Trusts.**—Cases under the Religious Endowments Act have been already dealt with above.

### Suits under 92 C. P. C.

**Madras decisions.**—In a scheme suit under s. 92 Civil Procedure Code, the plaintiff claimed among other reliefs that the defendants should be made to refund to the trust a sum of Rs. 11,000 which was estimated to be the amount misappropriated by them and also that they should hand over certain properties in their possession to the new trustees to be appointed under the scheme. A court-fee of Rs. 10 was paid on the plaint, but the court directed the plaintiffs to pay *ad valorem* duty on the valuation put on the several reliefs. On appeal, it was held that the reliefs for refunding money misappropriated and for possession of properties cannot be treated as part of the subject-matter in dispute between the parties but were merely ancillary reliefs nor did the plaintiffs claim any beneficial interest in the same. The suit was held to fall under Sch. II, Art. 17 (vi) of the Court-Fees Act and the court-fees paid was sufficient. *Ramrup Das v. Mohunt Sitaram Das*, 12 C. L. J. 221 was followed; and the observations in *Srinivasa v. Venkata*, 11 Mad. 148 were held to be *obiter dicta*. In the following extract from the judgment there is an elaborate review of the whole case law on the point.

“The figure Rs. 11,000 (being the value put in the plaint) was arrived at in this manner. The plaintiff actually paid a stamp duty only of Rs. 10 on the plaint as for a declaration and urged that the other reliefs which he claimed in the plaint were not capable of valuation because he was not asking that the property should be handed over to himself, and because he claimed no beneficial interest in those reliefs. The subordinate judge has held that the plaintiff was bound to pay court-fees on those reliefs as they formed part of the subject-matter in dispute. This view is not correct. *The plaintiff does not claim any beneficial interest in these sums*, but only says that on going through the accounts a sum which he estimates at Rs. 11,000 would be found due by the trustees to the trust and the trustees should be asked to make good to the trust itself that amount of money and hand over possession of the immoveable property. In such a case, we cannot treat those reliefs as being part of the subject-matter in dispute between the parties; they are merely ancillary reliefs. The case is covered by the

ancillary, and in particular clearly legislation for British Dominion citizens in places like Persia could not be deemed to be ancillary to the peace, order, or good government of the Dominion.

Merchant shipping as a peculiarly important case of Imperial control, both by reservation or the insertion of suspending clauses in Acts and the paramount power of Imperial legislation, received careful consideration. Due attention was drawn to the question of registration of British shipping, its relation to status in time of war, the work done abroad by British consular officers for merchant shipping under the Imperial Act, which might not be possible if these Acts ceased to have general validity, and the control exercised by Naval Courts in foreign waters. Just stress was also laid on the very important question of uniformity. On the other hand it was admitted that the narrow restrictions of ss. 735 and 736 of the *Merchant Shipping Act*, 1894, pressed heavily on the Dominions and were out of harmony with the new status of the Dominions, and in the result it was decided to refer to a Sub-Conference, as on other occasions, the issue of the principles which should govern merchant shipping in the Empire, having regard to the constitutional changes which had taken place since the *Merchant Shipping Act*, 1894, and the earlier Acts on which it was based, became law. India was granted special representation on this Sub-Conference, whereas inevitably she was not to be represented on the Expert Committee.

In addition to referring these issues to a Committee and a Sub-Conference the Conference agreed to place two opinions on record. One of them was the commonplace that 'the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned'. The other recorded that apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognized that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain<sup>1</sup> in

<sup>1</sup> This neologism for Imperial Government is cumbersome and need not be adopted outside official circles. See p. 1224, n. 1, and Preface.

In a suit for declaration that the plaintiff was the Sajjadanashin of two durgas and their properties, the Sub-Judge transferred some of the defendants as plaintiffs, made the original plaintiff a defendant, and passed the decree appointing the 1st and 2nd plaintiffs according to the revised cause-title as Muthawalis of the two durgas and directing that they should take possession of the two durgas and their respective properties. The 6th defendant appealed against the decree praying that he should be appointed trustee of both the durgas in place of plaintiffs 1 and 2 and the question arose whether the appeal could be valued under Art. 17-B, Sch. II of the Court-Fee Act or whether it ought to be valued under s. 7, cl. (5) of that Act. It was held that the case fell under s. 7 cl. (5) and that Art. 17-B was inapplicable. *Syed Mahomed Gouse and others v. Government*, 48 M. L. J. 572 = 1925 Mad. 804 = 88 I. C. 209. See also the cases cited on the point under s. 7 cl. v, p. 168, *supra*.

**Original side of the High Court.**—The High Court can make rules for the imposition and collection of court-fees on the original side by virtue of the power to make regulations for its procedure conferred by s. 15 of the Charter Act. *Md. Ishack Saheb v. Mahomed Moideen*, 45 M. 849. And the Court-Fees Act not being applicable to suits filed on the original side of the High Court, and the rules framed in Madras not excepting suits under s. 92, C.P.C. from liability to pay *ad valorem* fee, a fixed fee is not leviable in such cases but only *ad valorem* fees, as scheduled under the rules—*Vide* High Court-Fees Rules, Madras, *Swaminatha Aiyer v. Guruswamy Mudaliar*, 1927 Mad. 940 = 105 I. C. 119.

**Allahabad**—As observed by their Lordships of the Allahabad High Court in *Thakuri v. Bhama Narain*, 19 A. 62, a suit under s. 92 of the C.P.C. is brought for the protection and preservation of endowed property. And it is safeguarded by the rule which requires that it must be instituted by the Advocate General himself or with his sanction. Instances may often arise in which the trust property is of considerable value. If court-fee has to be paid with reference to the full value whenever it was found necessary to bring a suit to remove a trustee who had committed a breach of trust, such court-fees might be prohibitive and prevent institution of the suit \* \* \* Such a suit is not necessarily a suit for possession. In this case the plaintiffs also prayed that they themselves may be appointed as Superintendents but their Lordships observed that it did not matter and could not convert the suit as one for possession for the plaintiffs may never be appointed as such as prayed for by them. This decision was followed in *Gridhari Lal v. Ram Lal*, 21 A. 220.

In *Ghazaffar Hussain v. Yawar Hussain*, 28 A. 112, it was observed that "all that the plaintiffs can obtain in such a suit, is only a decree appointing a trustee declaring what properties are affected by the trust and directing the trustee to bring those properties into possession. If the trustee could not reduce the property into possession, then he must file a suit for possession".

Australia or of Malta or Southern Rhodesia. It is curious that the findings of the Conference appear to have raised difficulties in the States as to what the position of their Governors would be.<sup>1</sup> If they were to be merely parts of the local machinery, the claim for their abolition or at least for local appointments would be strengthened. Or it might be arranged to induce the Governor-General to act as head of the States, delegating his functions to deputies, or the Chief Justices might act. These speculations were clearly wholly premature. Nothing as regards the States could be done unless they themselves took in agreement the initiative, and then only after full consultation with the Commonwealth. The position of a Dominion and of a State differs vitally, and it is clear from the recent declaration of the Government of Victoria<sup>2</sup> that it did not desire that the position of the Governor should be rendered similar to that of the Crown in the United Kingdom. Still less, of course, could the case of Southern Rhodesia be regarded as parallel. In the case of Northern Ireland, on the other hand, there is no reason to imagine that the head of the Government has ever been supposed to act in any way otherwise than the Crown in the United Kingdom.

The issue of the appeal to the Privy Council was discussed,<sup>3</sup> but the Irish Free State received scant support in its desire to secure abolition. There was the usual, it must be feared insincere, declaration that His Majesty's Government did not desire that appeals should lie save in accordance with the wishes of each part of the Empire, but the effect of this was at once nullified by the insistence that a change affecting one part should not take place without full consideration of the effect generally, or in plain words that if Canada did not desire to change—and in face of Quebec this must be Mr. King's attitude—nothing had better be done. The Free State reserved the right to raise the issue again at the next Conference; it is true that in all ordinary cases it can nullify the right, but in constitutional

<sup>1</sup> The Premier of Victoria on 24 Nov. thought it necessary to declare that no Conference resolution could affect the right of the States to correspond through their Governors, as if it were possible that such a result could be contemplated; cf. Keith, *Glasgow Herald*, 27 Nov. 1926.

<sup>2</sup> *Parl. Pap.*, Cmd. 2683, pp. 17-19 (10 Nov. 1925).

<sup>3</sup> See Part VI, chap. iii.

Art 1. As the plaintiff had stated distinctly that the income of the temple lands was divided among the plaintiff and defendants 1 to 3 and that defendants 4 and 5 had according to the terms of a compromise, to pay the plaintiff a sum of 8 annas every day, it was considered that there was some basis for valuation and the plaint was directed to be returned to the plaintiff for submitting a proper valuation for the relief regarding the restoration of the office. The decision in *Delrus Banoo Begum v. Kazeo Abdur Rahiman*, 23 W. R. 453 at 455 was referred to and approved. *The Secretary of State for India in Council v. Jagannadhadosh Adhikari*, C. R. P. No. 316 of 1932 (Mad.) decided on 2-1-1933 (unreported).

5. A suit by a Hfunngyi to recover possession of a Khyauing which cannot be alienated and hence could have no market-value is taxable under this Article. *Komma v. Binda*, 57 I. C. 953.

6. Where the suit is substantially one under s. 92 Civil Procedure Code it does not become liable to pay *ad valorem* fees merely because the defendant is alleged not to have accounted for certain moneys and is directed to pay it into court. *Ramanuja Naidu v. Allagappa Chettiar*, 47 M. L. J. 646 = 1924 Mad. 882 = 85 I. C. 601 = 20 L. W. 716. See also 48 M. L. J. 514 cited *supra*.

7. Suit for removal of Mahant and appointment of a new Mahant and delivery of a trust property to him from the Mahant who is removed from office was held to come under this Article, *Gopi Das v. Lal Das*, 47 I. C. 983. See also *Beliram v. Ishar Das*, 8 Lah. 730 cited *supra*.

8. Where the plaintiffs claimed exclusive rights to manage certain Devasthanams and its affairs and prayed for removal of Dharmakharta or trustees, and for recovery of trust properties from the existing Dharmakarthas and the moneys that may be found due from them on taking accounts, it was held that these ancient institutions could not be held to have any market-value, that *ad valorem* fee is not leviable and that this Article applied. *Rajagopala Naidu v. Ramasubramania Ayyar*, 46 M. 782 F. B. = 1924 Mad. 10 = 74 I. C. 198. But when possession of property is sought from strangers to whom they were alienated by the trustee, the suit should be valued under s. 7 cl. v, since the alienees are in possession of the property adversely to the trust itself. *Venkatlal v. Kosaldasu Bavaji*, 61 M. L. J. 39 = 1931 Mad. 24. In this case, the suit was brought by the beneficiary under the trust, which provided for some wants of *Bhairagis* and in which the plaintiff possessed a beneficiary interest in the surplus income but the decision was not based upon this aspect of the case.

9. A suit for declaration that a certain wakfnama is valid as against a defendant who is in possession and claims the properties as his own private property is not maintainable without a consequential relief by way of joint possession, injunction or the like. Such a suit cannot therefore be brought upon a fixed court-fee payable under



it would accept the jurisdiction of the Court was approved. But responsibility under the Locarno Pact was declined, and a complex system of improvements on the mode of negotiating treaties involved no fundamental alteration of interest save in so far as inferentially it negated the Irish or Union of South Africa claim that inter-imperial relations were truly international or fell under the sphere of the League of Nations.

(d) *Autonomy, not Independence*

That the results of the Conference in the field of constitutional and international issues were obscure is sufficiently attested by the curious divergence of foreign opinion and the misconceptions of the press.<sup>1</sup> The issues were well defined by the utterances of General Smuts and General Hertzog. The former asserted that nothing in principle had been altered, the latter that he was fully satisfied with what he had accomplished. But the true conclusion was unquestionably drawn by General Smuts when he asked his rival point-blank whether he was going to adopt the logical outcome of his action in accepting the Conference resolutions, and to withdraw wholly the demand for the independence of the Union. In fact there can be no doubt that the truth lies more nearly with General Smuts than with General Hertzog. The decisions taken, though they were distinctly in favour of autonomy, negated independence.

To accomplish the desires of General Hertzog it was necessary that the Conference should have asserted simply that in no respect, internal or external, was the Union subject to Imperial control. This should have been followed up by a formal declaration *urbi et orbi*, as is the case of the recognition of the independence of Egypt,<sup>2</sup> of the independence of the Dominions. Nothing of the kind took place. The Conference declined to assent to the idea that the *Colonial Laws Validity Act*, 1865, should be repealed, which would have left the way open to secession of the Union from the Empire, and it merely referred it to an expert Committee. It refused even to accord freedom from the shackles of the *Merchant Shipping Act*, 1894, which incidentally precludes the Union from adopting a naval flag without Imperial assent. It raised difficulties even as to extend-

<sup>1</sup> See, e. g., *The Times*, 22 Nov. 1926.

<sup>2</sup> See *Parl. Pap.*, Cmd. 1617 (1922).

*Ganguli*, 20 Cal. 762; *Rajani Kant v. Rajabala Dasi*, 52 Cal. 128 = 1925 Cal. 320 = 85 I. C. 898; *Iswari Pershad v. Rai Hari*, 6 Pat. 506 = 1927 Pat. 145 = 106 I.C. 62; *Nikha v. Fazal Dad Khan*, 1930 Lah. 839; *Mt. Hajian v. Mahomad Shafi Khan*, 34 P.L.R. 772 = 144 I. C. 614 = 1933 Lah. 780. It does not matter even if the defendants set up a defence that the suit property is not joint property and that the plaintiff has no title to it. *In the matter of Nand Lal Muskerjee*, 35 C. W. N. 942. Where in a suit for partition the plaintiff has stated in the plaint that the property was joint among the parties a fixed court-fee is sufficient under this Article. *Mt. Durga Devi v. Mt. Parbati*, 141 I. C. 175 = 1933 Lah. 208. A co-sharer is entitled to maintain a suit for partition without paying *ad valorem* court-fee, if his possession to some part of the joint property is admitted or established. But if it is established that he is not in possession of all or any portion of the joint property or that there had been a complete ouster he must sue for recovery of possession and partition and pay *ad valorem* court fees on a plaint appropriately framed for the purpose. *Tulsi Bibi v. Furokh Bibi*, 60 C. L. J. 377 = 1935 Cal. 273.

(b) Where there is no prayer in effect in ejectment but a mere prayer for the change in the mode of enjoyment is sought, the suit falls within this Article. *Bhagawanappa Wani v. Shiva Wani*, 101 I. C. 770 = 1927 Nag. 248.

(c) It is the allegation in the plaint that has to be looked to. If the allegation is that the plaintiff is in possession, the denial of that averment by the defendant does not take the suit out of the scope of this Article. *Mongammal v. Tolaram*, 16 I. C. 773 (Sind).

(d) Where the title to certain properties is in question, the plaintiff claiming it as joint family properties and the defendant as his property then *ad valorem* fee is leviable. *Kanhaiya Lal v. Baldev Lal*, 1925 Pat. 703 = 85 I. C. 538.

(e) Suit for partition of property between co-tenants the parties being in joint possession thereof falls under this Article. *Gill v. Varadaraghuvayya*, 43 M. 396 F. B. = 38 M. L. J. 92 = 55 I.C. 517; *Hassan Khan v. Ahmed Khan*, 1935 Pesh. 30. Mohamedans have no "joint family property," which is a peculiar concept of Hindu Law, and hence s. 7, cl. iv (b) does not apply in partition suits between Mohamedans. Mohamedan co-sharers are tenants-in-common, and a suit by one of them for partition and possession of his share of his father's properties, alleging that he is in joint possession of the properties with the rest falls under this Article. *Kurshit Kathunby v. Hyder Khan*, 1924 Mad. 207 = 1923 M. W. N. 564. A Hindu family which has become divided in status is no longer a joint family and the members of such a family are tenants-in-common of their property. A suit for partition between them therefore comes within this Article. *Suryanarayana v. Seshayya*, 1926 Mad. 122 = 90 I. C. 843. An allegation in the plaint that there has been a prior division in status and that the plaintiff is in possession of the properties as a co-tenant with the other

to make any treaty binding the Dominions without their assent, but this is given no international sanction or recognition, and it remains with the Imperial Government to complete a treaty binding a Dominion if no early protest is received from the Dominion, and to reply to any protest later made that the Dominion is itself to blame for lack of promptitude in action. The value of the treaty will not be impaired. That positive assent must be obtained if active obligations are to be imposed has always been recognized as regards the great Dominions, and if it were ever in dispute after the Anglo-French Convention of 1919, all doubt vanished during the discussions as to the Lausanne Treaty. Nothing whatever was agreed to to secure diplomatic representation of any foreign country, save the United States, in the Dominions.

The Conference, therefore, may suggest further development, but its achievement was in the main that of negating the claim of the Union and of the Irish Free State that they were or should be independent States of public international law. The Dominions may attain independence, but that will not be until they appoint their own heads of the State, and until these heads can accredit and receive diplomatic agents and make treaties, declare war and peace, all in complete independence of the British Government.<sup>1</sup> Whether or not they recognized the same King nominally would then be a matter of complete indifference, and of minimal value. But it is hardly likely that States which desired real independence would trouble with the maintenance, as an ideal fiction, of a sovereignty which had ceased to be, what it now is, a true symbol of a very real and effective unity. It is characteristic that the group of supporters of Canadian independence who once planned a Kingdom of Canada has advanced to the logical conclusion of a Canadian Republic, and such Australian and South African opinion as desires independence holds strongly the same view. Nor, it need hardly be added, would the people of the Irish Free State,

<sup>1</sup> Cf. Rolin, *Revue de Droit International*, 1923, p. 226. Prof. Allin (*Michigan Law Rev.*, xxiv. 276) admits the limited international capacity of Canada, but insists that it is a preliminary inevitably leading to complete independence. I venture the prophecy that that eventuality will not become real in my time, for the rest *videant alii*. Contrast Mr. Mackenzie King, 26 Nov. 1926, who insists on autonomy in unity as vital.

subject-matter in dispute, and which is not otherwise provided for by the Act, and the respondent on the other hand urged that the suit is one for possession as provided for by s. 7 (v), it was observed that the question must depend upon whether the plaintiff, at the time he brought the suit, was in or out of possession, actual or constructive, of the suit property. It was held as follows "If he was in constructive possession, the suit would resemble in nature one filed by a co-parcener in joint possession of the family property for partition, and it has been held by a Full Bench of this Court in 21 M. L. J. 21 that such a suit is governed by s. 7 clause (iv) (b) of the Act, on the theory that what the plaintiff really asks for is the conversion of his joint possession of the whole, whether actual or constructive, into separate possession of his share. Similarly, as has been held in 43 M. 396, a suit by a co-tenant for partition is governed by Sch. II, Art. 17 (vi), because it would not fall under s. 7 (iv) (b), the property not being joint family property. The appellant further relies upon 17 M. 232, which related to an invalid kanom of tarwad property granted by the karnavathi to two junior members. It was found that although there had been an attornment of the tarwad tenants to the kanomdars possession really remained with the karnavathi, and consequently it was enough for the plaintiff, who sued as a junior member of the tarwad to upset this arrangement, to ask for a declaration that the kanom was invalid. If however the kanom had been granted to a stranger who was in possession, the learned Judges add that the possession also must be sought as a relief consequent upon the declaration. This decision has been considered and explained in 57 M.L.J. 544, where the circumstances were closely similar. 'There are no doubt observations in that judgment', the learned Judges say, 'about unity of possession and about the possession of the tenant being the possession of the tarwad, etc. But they must be read with the facts of the case and do not support the contention that under no circumstances can a junior member of the tarwad sue for possession if the tarwad had parted with possession.' They further remark, 'The character in which an alienee anandravan holds possession will depend upon how far he ousts the tarwad and not upon whether he is member of it or not. If the tarwad is ousted then the possession of the person who ousts whether he be a member of it or not, is as injurious to the tarwad as ouster by a stranger and the member in possession must be sued, as if he was a stranger'. The same principles have been followed by Wallace, J., in the case of a Hindu coparcenary in 86 I. C. 627. It is accordingly necessary here to decide upon the plaint, the terms of which must determine the nature of the suit and the amount of court-fee to be paid, whether it was incumbent or not upon the plaintiff to sue for possession. The plaint was assessed to court-fee on the footing that the suit was one for possession and we consider that this is clearly right and that the appellant must pay a fee upon his memorandum accordingly."

minions to override the declaration as to the nationality of married women contained in the Imperial Act of 1914. The Conference, therefore, refrained from deciding this point, in order that it might be dealt with in the light of the discussion of the question of the *Colonial Laws Validity Act*. There was, in fact, a considerable difference of opinion whether it was wise to provide that a British subject on marriage should not become an alien, but should merely be entitled to make a declaration of alienage, and attention was drawn to the activities of the League of Nations in promoting an investigation of the issue of double nationality and no nationality. The matter was therefore left to be disposed of after the constitutional issue had been removed from the way.

Minor changes, however, were agreed to. The proposals of 1923 were reaffirmed,<sup>1</sup> together with provision for facilitating by means of registration of birth the acquisition of British nationality by children of the third generation born abroad of British parents between 4 August 1914 and 4 August 1922; for extending the time for the registration of births of children of the second generation born abroad of British parents;<sup>2</sup> for removing doubts as to the meaning of s. 12 (1) of the Act of 1914;<sup>3</sup> for requiring a naturalized alien resident abroad to register annually at a British consulate; and for authorizing the revocation of certificates of naturalization granted or deemed to be granted in the case of the widow of a deceased naturalized British subject, any person becoming a British subject through his father's or mother's naturalization, and any naturalized person who for two years, being resident abroad, fails to register at a consulate. None of these changes can be regarded as other than innocuous.

#### (f) *Imperial Defence*

The subject of defence inevitably involved meetings between the representatives of the Dominions and the Admiralty, War Office, and Air Office, while a more general discussion took

<sup>1</sup> They include Imperial effect of the naturalization of inhabitants of mandated territories, e. g. South-West Africa.

<sup>2</sup> For the clauses rendering necessary such legislation see Dicey and Keith, *Conflict of Laws* (ed. 4), pp. 166 ff.

<sup>3</sup> This deals with the loss of British nationality by minors through change of a parent's nationality (*ibid.*, p. 193).

4. *Interpleader suit*.—The fee leviable in such suit is under this Article. The delivery of the property is not a consequential relief but will naturally flow out of the decree declaring right to the same of one or the other of the defendants. The plaintiff in an interpleader suit simply sets the ball rolling leaving it to the several contesting parties to establish their title and the plaintiff takes a neutral attitude. Hence the fee payable is not *ad valorem* on the claim but only a fee of Rs. 10. See *Brijnarain v. Balmiki Prasad*, 61 I. C. 810.

5. *Madras Estates Land Act*.—A suit for commutation of rent under this Act comes within this Article. *S. P. Chiuna v. Veerappa Naidu*, 46 M. L. J. 450. So also a suit to contest the landlord's right to sell, under s. 112 of the Act. But the plaint in such a suit being exempt from court-fee under the Government Notification, it is only the appeal or second appeal in such a suit which becomes chargeable to court-fee under this Article. *Vaithilinga Aiyasawami Aigar v. The District Board of Tanjore*, 52 M. 972 = 57 M. L. J. 570 = 30 L. W. 289 = 1930 Mad. 43.

### Appeals.

1. *Mortgage*.—(a) Appeal against decree absolute for redemption on the ground that mortgage money was deposited in court after period fixed for redemption. *Dadnov v. Somenath*, 10 I. C. 736. Under O. 34, r. 8, C. P. Code, as amended in 1929, money can be deposited, even after the expiry of time fixed by court.

(b) Appeal against the order of marshalling securities in a mortgage decree. *Ujgar v. Manatan Kuar*, (1883) A. W. N. 312. Where in an appeal from the final decree in a mortgage suit, the only question is whether the property should be sold or whether the mortgagee should foreclose, it is difficult to place an exact money value on the appeal and a fixed fee is payable on the appeal under this Article. *Durga Prasad v. Sri Niwas Surekha*, 151 I. C. 937 = 15 Pat. L. T. 696 = 1934 Pat. 473.

As to appeals in mortgage suits regarding priority and exoneration of property from liability, see pp. 572 and 573 supra.

(2) *Appeal from personal decree*.—An appeal by a defendant from a personal decree for money passed against him, on the ground that he is not personally liable but only as heir and legal representative of the deceased is governed by Sch. II, Art. 17 (vii) as amended by Bombay Amendment Act of 1932, [corresponding to Art. 17 (vi) of the main Act] and requires a court-fee of Rs. 15 only and need not be stamped *ad valorem*. *Jagannath v. Laxmi Bai*, 59 Bom. 439 = 36 Bom. L. R. 1220 = 1935 Bom. 111. [In this case, the decision turned on the fact that the value of the property was sufficient to satisfy the debt and there is an observation in the judgment that where the value of the property is low, the value of the subject-matter of the appeal would be the difference between that value and the amount of the debt.] An appellant appealing merely against the portion of a decree declaring his personal liability, can do so on a

admirable scheme of a true Imperial General Staff. Progress in establishment of air forces was noted, and stress laid on the importance of the provision of air bases, of means of refuelling, and the interchange of liaison officers, and, if possible, of air units. The value of the Imperial Defence College recently established at London as a means of training officers in the problems of Empire defence was impressed on the Dominion Governments, it may be hoped, not without some result. The burden borne in defence matters by India and the valuable decision to constitute a Royal Indian Navy were noted.

Nothing, however, proves more signally the unwillingness of the Dominions to commit themselves in defence matters than the necessity which the Conference felt of recalling the resolutions of a meeting of the Committee of Imperial Defence, which formed part of the proceedings of the Imperial Conference of 1911, in favour of the invitation of representatives of the Dominions to take part in meetings of that Committee when matters affecting the oversea Dominions were under consideration, and of the establishment of Defence Committees in each Dominion. It was agreed that the resolution should be understood as including matters of air defence as well as military and naval matters, to which naturally in 1911 it was confined. But it may be noted that no assent to the resolutions was given by the Dominions, which reserved consideration of the issues. The net progress at the Conference may, therefore, in regard to defence matters be treated as nil.

#### § 9. *Economic Questions at the Imperial Conference of 1926*

The most important result perhaps of the economic discussions was a negative one. Mr. Bruce, who had been assailed with some vehemence as endeavouring to intervene in British politics and to force preference on the electorate in 1923, took, very wisely, the opportunity both at the Conference and outside to place himself in the right by insisting that he merely urged the case of a preference from the point of view of the Dominions, and had no desire to appear as a partisan in English politics. The question of preference naturally was left much as in 1923, with the important exception that it was frankly recognized that the Imperial Government was under pledges to the electorate which precluded the possibility of any imposition of food

**Appeal from an order under O. 21, r. 50 (2) Civil Procedure Code.**—Sub-rules (2) and (3) of r. 50 of O. 21, show that the subject matter in dispute in proceedings under them is the liability of the person against whom execution is sought for payment of the decretal amount on the ground that he was a partner in the judgment-debtor firm. The subject-matter in appeal against an order passed under sub-rule (2), therefore, is the liability of the judgment-debtor for the same amount. This amount is clearly ascertainable and it cannot be said that the subject-matter of the appeal is incapable of valuation coming under this clause. *Jugal Kishore Gulab Singh v. Dina Nath Siri Ram*, 35 P. L. R. 565 = 1934 Lah. 958 See also under Sch. I, Art. 1.

**Appeal from order rejecting plaint or memorandum of appeal for non payment of additional court-fee demanded.**—See under Sch. I, Art. 1.

**Appeal claiming future interest disallowed by lower court.**—See under Sch. I, Art. 1.

**Articles 17-A and 17-B (Madras).**—Art. 17-A and 17-B set out the fees payable where the subject-matter is such as are set out in those Articles when the plaint or memorandum of appeal is presented to, or against a decree of a District Munsiff's Court, the City Civil Court, a Sub-Court or District Court, in the case of Art. 17-A and of a Revenue Court in addition in the case of Art. 17-B. Under both Art. 17-A and 17-B where the provision is that the specified fee is leviable on a memorandum of appeal against a decree of a sub-court or of a district court it might happen to be a second appeal to the High Court, for it may be against such decrees passed in first appeal. As in such cases of second appeals the fee leviable under Art. 17-A and 17-B is Rs. 100, the following notification was issued by the Madras Government and a clause (c) was added to item 23 of the Notification No. 358 dated 10th Sep. 1921 "reducing to Rs. 15 the fees chargeable under Sch. II on a memorandum of a second appeal in a suit of the class mentioned in the Arts. 17-A and 17-B and instituted in the Court of a District Munsiff" (Boards' Proceedings No. 472 R. dated the 23rd December 1922) and later on *Vide* Boards' Proceedings No. 141, Mis., dated 26th April 1926, a clause (e) was added to the item 23 mentioned above which purported to reduce to Rs. 15 the fees chargeable under Sch. II on a memorandum of second appeal in a suit of the class mentioned in Art. 17-B and instituted in a Revenue Court". But it may be noted that Art. 17-B itself provides for a fee of Rs. 10 and the levy of Rs. 15 is an enhancement and no reduction.

### **Jurisdiction.**

**1. Suit to set aside summary orders.**—In suits where a fixed court-fee is leviable, the question arises as to how the suit should be valued for purposes of jurisdiction. In the first place from the nature of the relief sought such a suit could not come within the



not of an important type. The Imperial Shipping Committee found its work commended and agreement reached that it was desirable to continue its existence on the status quo, under which it owes its authority and its responsibility to the Governments which take part in the Imperial Conference. The final act of the Washington Conference of 1926 on the subject of the pollution of waters by oil was considered, and it was agreed to recommend the draft convention then arrived at for the consideration of the Governments of the Empire.<sup>1</sup> The issue of bills of lading was also dealt with. Stress was laid on the wide acceptance, outside Scandinavia, of the Bills of Lading Convention of October 1923, to which effect was given in the United Kingdom and Northern Ireland by the *Carriage of Goods by Sea Act*, 1924, and also adopted by the Commonwealth of Australia, India, and a number of colonies and protectorates, and the Conference noted with satisfaction the fact that adoption of similar legislation was under consideration in the other Dominions, and was likely to be passed in those foreign countries which had accepted the Convention.<sup>2</sup> More complex was the question of the draft conventions on limitation of shipowners' liability and on maritime liens and mortgages, which had not been made the subject of British legislation. It was pointed out that the proposals as to limitation of liability were on the whole advantageous to claimants in respect of loss of life or injury to passengers, and would result in greater satisfaction being obtainable from foreign owners in certain cases of claims for other forms of loss. Stress was laid on the advantage of securing an effective international code regarding the recognition of mortgages and the extent to which maritime liens should be allowed precedence of mortgage claims, and a mild recommendation in favour of the acceptance of the Conventions<sup>3</sup> was attained. On the much more vital point of allowance of drawbacks in the country of export in valuing goods for importation, a point of special importance in connexion with the operation of anti-dumping clauses in Dominion Acts, no result was arrived at. Nor was any more effective result achieved in another case of importance, the question of levying

<sup>1</sup> *Parl. Pap.*, Cmd. 2702.

<sup>2</sup> Australia Act No. 22 of 1924; No. 58 of 1922 of New Zealand is not to this effect.

<sup>3</sup> See *L. Q. R.* xlii. 312-16.

(3) A judgment-debtor who is not in fact a party to the claim proceedings does not in the eye of the law become such by reason solely of his being the judgment-debtor. Unless therefore he is in fact, a party the order is not binding on him necessitating any suit to set it aside. *Krishnaswami v. Somasundaram*, 30 M. 355; *Vadapalli v. Dronaraju*, 31 M. 163.

Consequently (1) in a suit for declaration that property is not liable for attachment and sale in execution of a decree where the value of the property is in excess of the amount claimed in execution of the decree, the value of the suit for the purposes of jurisdiction is not the value of the property but the decretal amount whichever is the lessor of the two. *Khetra v. Mutaz Begum*, 38 All. 72=31 I. C. 879; *Anandi Kunwar v. Ram Niranjana Das*, 40 A. 505=45 I. C. 494; *Phul Kumari v. Ghanshyam Misra*, 32 C. 202; *Moolchand Motilal v. Ram Kishen*, 55 All. 315=1933 A. L. J. 222=1933 All. 249 (F. B.); *Narain Das v. Thakur Prasad*, 1935 Oudh 271. (No previous objection filed and hence the suit not one under O. 21, r. 63, but that makes no difference.

But (2) where the plaintiff seeks not only for a declaration that the property is not attachable but for a declaration of title to the property against the decree-holder and the judgment-debtor the value of the suit for purposes of jurisdiction is the value of the property. *Saidar Begum v. Mehar Chand*, 18 I. C. 820; *Narayan Singh v. Aiyasami Reddi*, 39 M. 602; *Daw Dut v. Daw Kwi*, 1932 Rang. 20. According to a recent decision of the Madras High Court, such value has to be calculated under clause v of s. 7 of the Court-Fees Act, the suit being one concerning land within the meaning of s. 14 of the Madras Civil Courts Act. *Arumuga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716=64 M. L. J. 568=1933 Mad. 439 (case-law on the point as to whether the value is the value of the property or the amount of the decree for which it was attached discussed.) See also *Maung Tun Thein v. Maung Sui*, 12 Rang. 670=1934 Rang. 372, where it was held that the valuation of a suit under O. 21, r. 63 C. P. C. is the value of the attached properties. In one case it was argued that the value of the relief should be arrived at by looking at Sch. II, Art. 17 (1), observing that a fee of Rs. 15 was payable, then looking at the table of *ad valorem* fees observing that that is the appropriate *ad valorem* fee for a claim of Rs. 190-200 and thus valuing that relief for the Court-Fees Act, the same value should be held to be the value for jurisdiction. This curious argument was not accepted by the court and the value of the relief was held to be the value of the subject-matter of the claim petition. *Janaki Amma v. Kuheema Umma*, 68 M. L. J. 231=41 L. W. 626=1935 Mad. 219.

**Declaratory Suit.**—The valuation cannot exceed the value of the subject-matter in dispute. Where a declaration is sought that a royalty could not be claimed at a higher rate, the value for the jurisdiction is the difference between the capitalized value of the two rates. *Karak v. Kalliyat*, 70 I. C. 343. Where the rate of maintenance

woods, which represent 80 per cent. of the wood consumption of the world, and in the supply of the hardwoods of temperate countries, though it was recognized that this defect could be made good by an extended use of tropical hardwoods. It was agreed that it was a matter of pressing necessity that forestry operations should be carried on with a definite aim of securing the sustained production of timber. Note was taken of the good work accomplished by the Standing Committee on Empire Forestry, of the performance of the Imperial Forestry Institute at Oxford, and of the Empire Forestry Association, whose Journal affords an effective means of dissemination of information regarding technical matters. The invitation of Australia and New Zealand to a Forestry Conference there in 1928 was welcomed, as was an intimation by the Union of its desire for such a Conference, in 1933, and to the Conference of 1928 was referred the question of creating an Empire Forestry Bureau.

A question of no small importance, and a novel issue at an Imperial Conference, arose in the effort to secure the wider use of British films in supersession in some degree of the domination of American films. There was no disagreement as to the objections to the prevalence of the use of American films, but the results of investigations as to modes of combating the difficulty were not remarkable. The proposals submitted to the Sub-Committee were varied : heavy customs duties on foreign films ; the free entry of or ample preference for British films ; legislation for the prevention of 'blind' or 'block' booking of films ; and the imposition of requirements as to the renting or exhibition of a minimum quota of Empire,<sup>1</sup> that is virtually British, films. It was admitted, as obvious, that the producers of British films must show resource, enterprise and adaptability if they were to profit by any aid accorded, but it was also agreed that there might be a very real possibility of affording a real impetus to the industry by timely legislative help, and above all by the creation of effective arrangements for the distribution of films throughout the Empire. The importance of extending the use and production of educational films such as those of the resources of the Empire shown at Wembley in 1924-5 was emphasized, and the question of the employment of such films in education was commended for consideration by the Imperial Education Conference of 1927.

<sup>1</sup> Victoria passed legislation for a quota in 1926.

not less than Rs. 10,000. The contention of the appellant, was that in a case falling under Art. 17-A (iii), the plaintiff is entitled to put his own valuation upon the relief claimed by him as it is not capable of valuation, and even if it be held that the relief is capable of valuation, the relief should be valued not at the market value but upon the value of the relief which would accrue to the plaintiff. Their Lordships observed thus:—"The question whether a relief with regard to an adoption is capable of valuation or not need not be gone into at length. Whatever may be the view of the other High Courts, the Madras High Court has taken the view that a relief with regard to the validity or otherwise of an adoption is capable of valuation. In *Kesava v. Lakshminarayana*, 6 Mad. 192, it was observed 'that the plaintiff has asked for a declaration that the adoption was not made and that if it was made it was invalid. The fact and validity of the adoption is then the subject of the suit' and in valuing it for purposes of jurisdiction, a computation must be made of the value of the interest that would be lost to the alleged adopted minor, if the adoption be declared invalid.' It stands to reason that, when the plaintiff comes into court urging that an alleged adoption did not take place and even if it did take place is not valid, he asks for a relief not merely with regard to the adoption but to the property which the adopted boy would acquire by means of the adoption.

The Allahabad High Court in *Sheo Deni Ram v. Tulshi Ram*, 15 All. 378, departed from the view of this Court in *Keshava v. Lakshminarayana*, 6 M. 192, and in *Bai Machbai v. Bai Hirbai*, 35 Bom. 264, this question does not arise. That was a case between Muharumadans. In *Prahlad Chandra Das v. Dwaraka Nath Ghose*, 37 C. 860, the learned judge followed the practice which they had been following for a number of years. I do not think that on the strength of these cases the correctness of the decision in *Keshava v. Lakshminarayana*, can in any way be questioned. It is also urged that in the case of a karnavan of a Malabar Tarwad and in the case of a trustee, the relief cannot be valued and that principle should be applied to this case. In the case of karnavan, he does not own any property in his own individual right; he is only a manager of the Tarwad for the time being; and in the case of a trustee, it is well known that he has no personal interest in the matter though he may think much of his office as a trustee. Those cases cannot apply to a case like the present. The legislature in amending the Court-Fees Act by inserting in column 3 the following, namely, "Hundred rupees, if the value for purposes of jurisdiction is less than ten thousand rupees, and five hundred rupees if such value is ten thousand rupees, and upwards," has expressed its view that a relief with regard to an alleged adoption is capable of valuation. Under the old Act, the declaration was sought on a ten rupee stamp. When the legislature advisedly enacted the clause with regard to the proper fee, it assumed that a relief in regard to an adoption was capable of

the prospect of a short journey of two and a half days by airship to Canada. To aid the latter project Canada readily promised mooring masts and meteorological observation. Mr. King stressed the great work of aerial survey and forest protection carried out in Canada, reminding the Conference of the remarkable aptitude for air work shown by Canadians in the Great War. Mr. Bruce cited the large amount of use of aeroplane services made in Australia, hinted at the use of aeroplanes to shorten the mail service between Perth and Adelaide, admitted that the airship was still experimental, but would consider providing a mooring mast. Mr. Coates did not commit his Government even so far, and admitted that for lack of opportunity the air sense was little developed in New Zealand. The Union use of aeroplanes for defence was stressed, but civil aviation, it was explained, was left to outside enterprise ; landing grounds were available, and a mast would be considered. The Irish Free State expressed interest in a project of a service to Canada, while Newfoundland recognized that in such a service she could hardly play any part. India justly claimed that her constitutional position should be recognized as regards any proposed air service, and that she should be a principal in any contract for a service to India, all hangars, aerodromes, and apparatus being paid for and becoming the property of the Indian Government. Mr. King finally urged the desire of Canada that the next Imperial Air Conference might be held in that Dominion. It was agreed also by Australia to co-operate in trial flights by the local air force to Singapore, with Imperial experiments from Singapore, and a similar understanding was reached as to flights from the Union to Kisumu. Exchange of information on civil aviation and of personnel was recommended. No progress whatever was made as to improved steamship communications between Great Britain, Australia, and India, and Great Britain and New Zealand.

Research was investigated by a Sub-Committee, whose report was enlivened by a note of Lord Balfour's composition. Stress was laid on the advantage of work in co-operation and exchange of information as to fisheries, agriculture, forestry, minerals, and industrial questions, on the importance of encouraging men of ability to take up such work, and on the excellent results already achieved as regards cotton growing. Note was taken

valued as if it were a suit for possession of the above twelve items, in which case the valuation for jurisdiction would be the same as for court-fee purposes. For example, in the case of land he has taken not the market-value but 5 times the assessment and on that footing the valuation comes below Rs. 3,000. The appellant contends first, that in such a case the court is bound to accept the plaintiff's valuation for the purposes of jurisdiction and secondly, that if this view is wrong the proper valuation is the market-value of the 12 items. \* \* \*

The Suits Valuation Act VII of 1887 is naturally the statute to be followed if there is any section directly *ad hoc*, but there is not. No rules have been framed by the local Government under s. 3 of the Act, nor does the present suit come under the categories mentioned in sub-rule (1); it comes under Sch. II, Art. 17 of the Court-Fees Act. Section 8 of the Suits Valuation Act does not apply, because this is not a case in which the court-fee is payable *ad valorem*, and s. 9 does not apply. One is driven back to ss. 12 and 14 of the Madras Civil Courts Act III of 1872, I think it is clear that s. 14 does not apply. The scope of that section may be gauged by a reference to s. 6 of the Suits Valuation Act. This section is to be wholly repealed if and when rules under s. 3 are promulgated. Section 3 relates only to particular categories of suits of which the present suit is not one. Obviously therefore the framing of rules under s. 3 and therefore the repeal of s. 14 of the Civil Courts Act will not affect a suit like the present, and it follows that s. 14 is not intended to apply and does not apply to such a suit. Reference may be made to *Chalaswami Ramiah v. Chalaswami Ramaswami*, 13 I. C. 203. Hence the lower court is wrong in holding that s. 14 has any application. This is important as will appear later on, since it implies that the subject-matter of the present suit is not land, house or garden. Section 12 the general section, as amended by Act III of 1916, remains, whereby it is declared that the jurisdiction of a Subordinate Judge extends to all Civil suits and the jurisdiction of a District Munsif to such suits of which the amount or value of the subject-matter does not exceed Rs. 3,000. Two points then arise for decision—(1) What is the subject-matter of the present suit, and (2) What is the value of that subject-matter? As to (1) it has been noted above that the subject-matter of the suit is not the land or other properties which may be affected directly by the declaration. The subject matter is clearly the fact and validity of the adoption. *The plaintiff is not in any sense suing for possession of the property.* She is in possession of some and need not sue for that and she does not want possession of the remainder. The term "subject matter" is obviously not to be confined and applied only to what is capable of valuation in money. There are many suits which are incapable of such valuation, for example, suits for restitution of conjugal rights, suits for precedence in ceremonial worship and so on. The test simply is, what is the nature of the relief

## APPENDIX

### A. *Tasmanian Money Bills*

The remarkable view of the fundamental principles of the law of the Tasmanian constitution taken by Mr. A. G. Ogilvie, the Attorney General, and Sir H. Nicholls, C.J.,<sup>1</sup> was naturally not shared by the leading Australian counsel to whom the issue was submitted on behalf of the Farmers', Stockowners', and Orchardists' Association, but their views, unhappily, were not published until May 1926.<sup>2</sup> Sir Edward Mitchell, Mr. David Maughan, and Mr. J. H. Keating were agreed that the Bills had not been duly passed, and that the presentation by the Attorney General for the assent of the Administrator was not justified. They recognized, inevitably, the impossibility of any injunction being obtained by a taxpayer forbidding the Treasurer to make payment under the *Appropriation Act* thus wrongfully assented to, a view for which, it may be noted, there is judicial authority in the Transvaal,<sup>3</sup> but they held that it would be perfectly open to any taxpayer to obtain a judicial decision on the validity of the second of the Acts improperly assented to, the *Land and Income Tax Act* (No. 2), 1924 (15 Geo. V, No. 70). S. 5 of that Act forbade the deduction of Federal income tax from income for assessment to State income tax for the year ended 30 June 1923, and by insisting on the right to deduct, which was to be continued by the amendment made by the Council, but rejected by the Assembly, the question could have been definitely disposed of by the Court. It was agreed by these high authorities that the Court would not refuse, on suitable evidence being tendered, to go behind the apparent enactment in due course of the measure. Sir E. Mitchell also pointed out that, as the *Appropriation Act* was invalid, it would later be possible to obtain repayment of any sums paid under it in accordance with the decision in the *Auckland Harbour Trust* case.<sup>4</sup>

The matter, however, was settled by agreement. On 3 March 1926 the Council passed a Bill repealing s. 33 of the *Constitution Act* and defining the relative powers of the two houses, and after reservation the measure became law as 16 Geo. V, c. 90. All appropriation or taxation measures must begin in the Assembly, with the usual exception for imposition or appropriation of fines, pecuniary penalties, and fees for licences or services, and the usual rule for the necessity of

<sup>1</sup> *Tasmania Parl. Pap.*, 1924, No. 41.

<sup>2</sup> *Tasmania Daily Telegraph*, 29 May 1926. I owe copies of these opinions to the kindness of Mr. Keating.

<sup>3</sup> *Dalrymple v. Colonial Treasurer*, [1910] T.P. 372.

<sup>4</sup> [1924] A.C. 318.

laid down generally that the valuation in a suit for a declaration of title by the party in possession shall be as if it was a suit for possession. But that can be interpreted in two ways, either as laying down that the value of the subject-matter is to be the value of the property or as laying down that the method of calculating the valuation of the subject-matter is to be the method of calculating that value in a suit for possession. The decision is not clear that the latter interpretation is meant. Section 4 of the Suits Valuation Act is also relied upon. No doubt if rules had been framed under s. 3 the method of calculation argued for by the respondent would come into force but that section seems to imply rather that if this method is to be employed it is necessary that the rule should have been framed under s. 3. The principle would be a good principle but, so far, it has not been embodied in any rule or statute.

"The general principles deducible for valuation for purposes of jurisdiction where no special method of valuation has been provided by statute, then, would seem to be, (1) that where the subject-matter of a suit is wholly unrelated to anything which can be readily stated in definite money terms, then the plaintiff, having to put some money value for the purposes of jurisdiction, must put a more or less arbitrary value, and, there being no factors in the case from which the court can say his valuation is wrong, or dishonest, the court will accept that valuation; such is the case of a suit for restitution of conjugal rights—see *Aklemannessa Bibi v. Mahomed Hatem*, 31 Cal. 849, and *Zair Husain Khan v. Khurshet Jan*, 28 All. 545, or a suit for a declaration that the plaintiff is a member of a charity committee—see *Murza v. Hyder Ali Sahib*, 24 I.C. 310 and (2) that where the subject-matter is so related to things which have a real money value that the relief asked for will affect these, then the value of the suit for the purposes of jurisdiction is to be taken as the market-value of the property affected, such for example, as a suit for a declaration of fishery rights—see *Mohini Mohan Misser v. Gour Chandra Rai*, 56 I. C. 762 or a suit to set aside an award, *Venkatachalam Pillai v. Srinivasa Ayyar*, 18 L. W. 309 or a suit regarding liability to pay royalty—see *Royrappan Nambiar v. Kalliyatt*, 1924 Mad. 621.

But the market-value must be the market-value of the whole property affected and not merely the plaintiff's share. This has been clearly laid down in *Keshava v. Lakshminarayana*, 6 Mad. 192 and *Ibrayan Kunhi v. Komamutti Koya*, 15 Mad. 501.

In applying these principles to the present suit which is a suit for a declaration without consequential relief, the appellant contends that the first principle applies, that is, that the court cannot refuse to accept the plaintiff's valuation unless it holds that that valuation is dishonest. There is a good deal to be said logically for this position, but clearly it has not been adopted in this Presidency as the law. The argument would involve the application of this criterion to all suits under Sch. II clause 17 of the Court-Fees Act,



domiciled in the Union will be entitled to the right to have their wives (monogamous) and children, if minors, admitted to the Union in accordance with the terms of Resolution 2 of the Imperial War Conference of 1918. The Indian Government was invited to appoint an officer in the Union (the Rt. Hon. Srinivasa Sastri has accepted the post) to secure effective co-operation between the two Governments, and, as a concession, the Areas Reservation and Immigration and Registration (Further Provision) Bill was not proceeded with. Stress was laid on the fact that neither party to the agreement was bound for any definite time; the Union retained its right to legislate as it thought best, and the Indian Government was not pledged to continue to co-operate indefinitely.

The solution, accordingly, amounts to an attempt to assimilate a certain number of the Indian population to the Cape coloured population, and to remove the remainder; its success must essentially depend on the success of the emigration scheme, the difficulties of which are considerable, and on the genuineness of the efforts to open up possibilities of Western civilization to those Indians who desire to make South Africa their permanent home. It is clear that the Indian Government has spared no effort to be conciliatory, while the Nationalist Government had unquestionably grave difficulties to contend with from its followers. It is inevitable that the solution arrived at in South Africa should have an effect on the position of the Indians in the territories under Imperial control in East Africa where, it appears from the House of Commons discussion of 19 July 1927, the policy is to be inaugurated of subordinating the interests of the native population and the Indian immigrants alike to the welfare of European settlers, regardless of the obligations of trusteeship affirmed so recently as 1923. The decision marks a distinct deterioration of British conceptions of fair play to native populations, and is an interesting illustration of the operation of Dominion modes of thought on Imperial statesmen.

### *C. The Defence of Rhodesia*

In December 1926 the Legislature passed a Bill which assimilates the position of Southern Rhodesia in matters of defence to that of the Union. Defence includes only the defence of the colony whether from attack from without or internal insurrection, and no power is given to use the forces provided for Empire defence, though for local defence service within or without the Colony is authorized. In war time all citizens between 18 and 60, both inclusive, are liable to render personal service, while those between 19 and 23 are required to undergo peace training, and may begin at age 18; due allowance is made for those who have become efficient as cadets. Those not being trained

the Suits Valuation Act, *viz.*, suits governed by s. 7, paragraphs 5, 6 and 10 of the Court-Fees Act, that is, possession of land, pre-emption and specific performance of an award. This method of interpreting this section is adopted by inference from the effect of s. 6 of that Act. It says that when rules are made for the territories under the administration of the Madras Government, s. 14 shall stand repealed as regards this presidency. A fallacy lurks in this inference because the effect of s. 4 of the Suits Valuation Act which is material in this connection is left out. That section says that when rules for valuing land have been made under s. 3 the same value shall be applicable as a maximum in suits relating to land or an interest in land falling within s. 7 cl. 4 or Schedule II, Art. 17. Now the suits relating to land in s. 7 cl. 4 are in sub-clause (b), (c), (d) or (e). Clause (b) deals with suits for partition, (c) with declaratory suits where consequential relief is prayed, (d) for injunction and (e) for a right to some benefit not otherwise provided for to arise out of land. In these suits and suits falling like the present one under Sch. II, Art. 17 relating to land, the valuation according to the rules made under s. 3 are to be adopted but as a maximum. This is to prevent over-valuation of suits. In suits for partition, declaration or injunction, in respect of land or for some benefit to arise out of land not otherwise provided for it would be necessary to value the land and it would be also necessary to value the interest involved and in such cases the section provides that the valuation of land under rules made under s. 3 shall be adopted as a maximum. The effect of this section on s. 6 is that if rules are made under section 3 the valuation thereby prescribed will be applicable also to the suits mentioned in s. 4 and then the need for s. 14 of the Civil Courts Act ceasing to exist that section shall stand repealed. Therefore it seems to me incorrect to say that s. 14 of the Civil Courts Act refers only to suits mentioned in s. 3 of the Suits Valuation Act."

### **Cases where it is not possible to estimate the value.—**

Where on account of the fact that the subject-matter of the suit could not be valued, a fixed court-fee is levied, then the notional value could not replace the real value for the purpose of jurisdiction. *Rachappa v. Siddappa*, 24 C. W. N. 33 P. C. See also the several local amendments to this Article and the Rules framed by several Provinces. *Vide* Appendix.

A suit where the relief comes within Art. 17 (*vi*) for purpose of court fees may not necessarily be incapable of valuation for purpose of jurisdiction and cannot always be valued arbitrarily. In *Ramu Aiyer v. Sankara Aiyer*, 31 Mad. 89, where the suit was to enforce registration of document and therefore came within Art. 17 (*vi*) for purpose of court-fees, it was held that the jurisdiction value of the suit was the value of the properties to which the document related. Similarly in a partition suit where the relief comes within Art. 17 (*vi*) for purpose of court-fees, the jurisdiction value is the value of the property to be partitioned. See *Kirty Churn Mitter v. Annath Nath*

Commonwealth will undertake all future loan transactions. The Council will determine from time to time what sums can be borrowed at reasonable rates and will allocate the funds to the Commonwealth and the States by unanimous vote, or in default in accordance with an agreed formula; other questions will be decided by a majority vote, the Commonwealth having three votes, each State one, but defence borrowings are not included in the scheme. The Commonwealth further takes over liability for the principal, and interest at 5 per cent. of State debts amounting to £11,036,000, the agreed value of State properties taken over by the Commonwealth. The necessary constitutional change to effect the purpose of the scheme would provide that Parliament may, for carrying out or giving effect to any agreement made or to be made between the Commonwealth and the States, make laws with respect to the public debts of the States, including the taking over of such debts, management, payment of interest, and provision and management of sinking funds, consolidation, renewal, conversion, and redemption, the indemnification of the Commonwealth by the States, and the borrowing of money by the States or by the Commonwealth for the States. Temporary proposals cover the period pending the passing of the necessary legislation by the six State Parliaments to approve the scheme and the enactment by referendum of the necessary alteration in the Commonwealth Constitution.

It should be added that the High Court has made it clear that it is not possible for the States to levy a petrol tax, such as that of 3d. a gallon imposed by Act No. 1681 of South Australia in 1925<sup>1</sup> on vendors of motor spirit, on the score that such a duty is one of excise, and similarly on 3 March 1927 it was ruled that a tax on newspapers in New South Wales of  $\frac{1}{2}$ d. a copy was also invalid as an excise duty. On the other hand the Court has ruled that it is perfectly legal for the Commonwealth to pass the *Federal Aid Roads Act*, 1926, which provides an elaborate scheme for aiding the States in the construction of main roads; the legality of the measure was strongly contested in the Senate by Sir H. Barwell,<sup>2</sup> who cited the opposition of Mr. Latham, when a private member in 1925, to a similar measure. But the Bill was justified by Mr. Latham himself, as Attorney-General, in the Lower House<sup>3</sup> on the score that it was definitely framed as action under s. 96 of the Constitution, which permits the grant of assistance by the Commonwealth to the States on such conditions as it thinks fit. In August 1927 a Royal Commission was set up to report on constitutional changes.

<sup>1</sup> See *J.C.L.* VIII. ii. 100.

<sup>2</sup> See *Parl. Deb.*, 1926, pp. 5111. Contrast Senator McLachlan, pp. 5123 ff.

<sup>3</sup> *Parl. Deb.*, 1926, pp. 4682 ff.

(b) for probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925.	When the amount or value of the estate does not exceed two thousand rupees.	Two rupees.
	When it exceeds two thousand rupees but does not exceed five thousand rupees.	Five rupees.
(c) for a certificate under the Indian Succession Act, 1925, or Bombay Regulation VIII of 1827.	When it exceeds five thousand rupees.	Ten rupees.
(d) for opinion or advice or for discharge from a Trust, or for appointment of new Trustees under ss. 34, 72, 73 or 74 of the Indian Trusts Act, 1883.	.....	Ten rupees.
(e) for the winding up of a company, under s. 166 of the Indian Companies Act, 1913.	.....	Ten rupees.
(f) under r. 58 of O. 21 of the Code of Civil Procedure 1908, regarding a claim to attached property.	When the amount or value of the property exceeds five thousand rupees.	Ten rupees.

**Central Provinces.**—By Act XVI of 1935, the following Article has been substituted, namely:—

18. Application—		
(a) under para. 17 or 20 of the Second Schedule to the Code of Civil Procedure, 1908 (V of 1908);		One rupee.
(b) for opinion or advice or for discharge from a trust, or for appointment of new trustees under section 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882);	...	Ten rupees.
(c) for winding up of a company, under section 166 of the Indian Companies Act, 1913 (VII of 1913).		Ten rupees.
(d) for the appointment or declaration of a person as guardian of the person or property or both, of minors under the Guardians and Wards Act, 1890 (VIII of 1890).		Two rupees.

ments of diplomatic representatives of Canada and the Irish Free State already made to Washington, which, however, had up to then preferred not to reciprocate. The appointments appear clearly to have been made after consultation with, and with the full approval of, the Imperial as well as of the Canadian and the Free State Governments respectively, and the Ministers were necessarily accredited to the heads of the Canadian and the Irish Free State Governments as representatives of the King.<sup>1</sup>

It had been generally anticipated that no further steps to increase diplomatic representation would be taken by any Dominion at an early date, there being special reasons for such representation in the case of the United States, but Mr. Mackenzie King, speaking at Ottawa on 2 July 1927 in honour of the United States Minister to Canada, expressly intimated that it was anticipated that he would be the precursor of a number of other diplomats at the Canadian capital, and that additions would be made to the diplomatic representation of Canada abroad. The policy has been criticized in Conservative circles in the Dominion, as tending to involve the danger of a divergence from the principle of the unity of Imperial foreign policy and diplomatic representation, which Mr. King homologated at the Imperial Conference of 1926;<sup>2</sup> but it is clear that no breach in the essential unity of the Empire is necessarily involved in the policy in question. The essential basis of that unity lies not in the personality of negotiators, but in the control exercised by the Imperial Government in respect of the issue of full powers to sign treaties and of instruments of ratification of treaties, such control appertaining to that Government, not in its own right as a superior Government, but as a trustee for the whole of the Empire, and existing in order to secure that any question of vital importance to the Empire may be brought before the Imperial Conference, or the Governments composing it, for discussion before any final action is taken.<sup>3</sup>

In accordance with the decision of the Imperial Conference, on 9 March 1927, formal intimation was made to the Council of the League of Nations by Sir A. Chamberlain with the assent of representatives of Canada, the Commonwealth, and the Irish Free State,

<sup>1</sup> Mr. Fitzgerald, in *Dáil Éireann*, 23 Feb. 1927. On the governmental reconstruction after the General Election of June 1927 the Ministry of External Affairs was given to Mr. Kevin O'Higgins, but he was assassinated on 10 July, probably as a reprisal for the execution of Republicans ordered in 1922-3.

<sup>2</sup> In the same spirit Canada informed M. Rosengolz on 3 June 1927, through the Foreign Office, that the Agreement of 16 Mar. 1921, between the United Kingdom and the Soviet Government, would no longer apply to Canada.

<sup>3</sup> South Africa instituted from 1 July 1927 a department of External Affairs under the Prime Minister. This accords with the decision to eliminate correspondence via the Governor-General, as in Canada and the Free State.

## Article 19.

Agreement in writing stating a question for the opinion of the court under the Code of Civil Procedure, 1908.	...	<p>Ten rupees.</p> <p>In Bihar and Orissa, Central Provinces and United Provinces—Fifteen rupees.</p> <p>In Bombay—Twenty rupees.</p> <p>In Madras—when presented to a District Munsif's Court or the City Civil Court—Fifteen rupees.</p> <p>When presented to a District Court or a sub-court—One Hundred rupees.</p>
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## COMMENTARY.

**Amendment.**—The wording of the Article was substituted by the Code of Civil Procedure s. 155 and the 4th Schedule.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Bombay, Central Provinces, Madras and United Provinces.

**Stating a case for the opinion of the court.**—O. 36, r. 1, C. P. C. provides that parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the court.

## Article 20

Every petition under the Indian Divorce Act, except petitions under s. 44 of the same Act, and every memorandum of appeal [or of cross objection Bihar and Orissa] under s. 55 of the same Act.	...	<p>Twenty rupees.</p> <p>Thirty rupees in Bihar and Orissa, Bombay and United Provinces.</p>
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## COMMENTARY.

**Local amendments.**—This Article has been amended in Bihar and Orissa, Bombay, and United Provinces.

**Application of Article.**—This Article applies only to petitions under the Indian Divorce Act and is not applicable to a petition under

judicial officers, by Proclamation for three months, and the Proclamation may be renewed. From these Special Courts no appeal lies, and the death penalty, which is normally confined to cases of murder and treason, may be imposed for the possession of firearms without authority, if and when the Government<sup>1</sup> decides that the state of the country warrants the bringing into force of the provisions of the measure.

The proposals form an interesting illustration of the sovereignty of Parliament, as none of them were suggested to the electorate before the general election. It is noteworthy also that the ministry, which in the preceding Parliament enjoyed the support of a majority of the members of the Dáil, no longer possessed an independent majority, being in fact outnumbered by the two sections of the Republicans (Fianna Fail and Sinn Féin), who, at first, by declining to take their seats in view of their objections to the oath, were unable to exercise any influence on the Administration. Strong protests were raised by the Labour opposition to the Public Safety Bill, and on 28 July Mr. Johnson asserted that his party was prepared to accept the responsibility of governing, either alone or in association with the Farmers' party, the National party, or the Independents, or would give generous support to any of these elements in forming a Government. The statement is important as marking the transition to more normal political relations in the Free State. The general election showed, as usual when proportional representation is applied, the appearance of a large number of parties and cross-voting, eliciting suggestions for abandonment of the system.

In August the passing of the *Public Safety Act* with a declaration by both Houses of urgency, which precluded the application of the provision in Article 47 of the Constitution for its suspension and submission to a referendum, and the passing<sup>2</sup> of the Electoral (Amendment) (No. 2) Bill offered so grave a menace to the safety and liberty of the members and supporters of Fianna Fail that Mr. de Valera agreed to a complete change of policy. It had long been argued that there was nothing incompatible in taking the oath, while continuing to work for complete independence; in the Union of South Africa Nationalist members and ministers have never hesitated to regard their oaths as quite compatible with working openly for independence. This view now prevailed; the members of Fianna Fail took

<sup>1</sup> The power, as usual, is given to the Executive Council alone, ignoring the Governor-General. Further, the widest authority to expel opponents from the State is given to the Minister of Justice.

<sup>2</sup> Now suspended in operation for demand for referendum, by more than two-fifths of Dáil.

## Article 22—Bengal— [Added by Act VII of 1935].

Petition—(a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932 ;

(b) questioning the election of any person as a member of a District Board or Local Board, when presented to any authority appointed under clause (a) of section 138 of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections.

...

Fifteen rupees.

## Article 22—Punjab—.[Added by Act VII of 1922].

Plaint or memorandum of appeal in a suit by a reversioner under the Punjab customary law for a declaration in respect of an alienation of ancestral land.

.....

Twenty rupees.

The term "ancestral land" has been explained to mean land held by common ancestor See *Musst. Jintan v. Ahmad*, 1928 Lah. 221. As to a suit by sons for a declaration regarding a mortgage with possession executed by the father in respect of ancestral land and a deed of further charge subsequently executed by him on the same property, see *Suba Singh v. Bala Singh*, 1933 Lah. 382, cited at p. 330 *supra*.

## Article 22—United Provinces [Added by Act VII of 1933]

Election petition.

(a) A petition presented to the Commissioner of a division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under subsection (2) of the section 22 of the United Provinces Municipalities Act (Act II of 1916), questioning the election of any person as a member of a Municipal Board.

One hundred rupees.





## ANNEXURE A.

## VALUATION OF THE MOVABLE AND IMMOVEABLE PROPERTY OF DECEASED.

Cash in the house and at the banks, household goods, wearing-apparel, books, plate, jewels, etc.

*(State estimated value according to best of Executor's or Administrator's belief.)*

Property in Government securities transferable at the Public Debt Office.

*(State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.)*

Immoveable property consisting of

*(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)*

Leasehold property

*(If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.)*

Property in public companies

*(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)*

Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money.

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# SUITS VALUATION ACT (VII of 1887)

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A plaintiff cannot be allowed to put an arbitrary value upon his claim where the valuation can be ascertained correctly, nor can he be allowed to overvalue or undervalue his claim with a view to choose his forum. *Inayat Husain v. Bashir Ahmad*, 1932 A. L. J. 416=1932 All. 413; See also *Jagadish Saran v. Jaidai Kunwar*, 1933 All. 903 cited under s. 4 *infra*; *Dhaturi Singh v. Kedar Nath*, 6 Pat. 597=1927 Pat. 224.

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As a general rule, the valuation depends on the allegations made in the plaint and the pleas raised by the defendant are not to be taken into consideration. See *Mt. Barkatunnissa v. Mt. Kaniz Fatima*, 5 Pat. 631; See also 1926 Mad. 678; 1932 Mad. 409 and other cases cited under s. 7 of the Court-Fees Act, pp. 56-58.

What *prima facie* determines the jurisdiction of a court is the claim or the subject-matter of the claim, as estimated by the plaintiff and that having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit, notwithstanding *bona fide* mistakes made by the plaintiff in the estimate of the value. But the plaintiff cannot oust the jurisdiction of the court by making unwarrantable additions to the claim which cannot be sustained to the knowledge of the plaintiff. *Lakshman Bhalkar v. Babaji Bhalkar*, 8 Bom. 31. But see 9 I. C. 574=8 A. L. J. 376; *Girja Kur v. Shiva Prasad Singh*, 1935 Pat. 160.

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Ordinarily the value fixed by the plaintiff in his plaint determines the forum of appeal, unless it is found that the plaintiff has deliberately undervalued or overvalued his claim with the object of having his suit tried or the appeal heard by a court which would not have jurisdiction if the claim is properly valued or has acted recklessly in fixing the value. *Pitam Singh v. Bishun Narain*, 1931 Oudh 58; *Muhammad Abdul Majid v. Ala Bux*, 47 All. 534=1925 All. 376. In *Sundar Das v. Mt. Umda Jan*, 5 Lah. 481=1925 Lah. 1 (F. B.) it

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## COMMENTARY.

Part I of the Act been extended to the Punjab by Notification of the Government of India—*Vide Gazette of India*, 1889, Part I, p. 107.

3. (1) The Local Government *may subject to the control* of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-Fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d).

Power for Local Government to make rules determining value of land for jurisdictional purposes

(2) The rules may determine the value of any class of land or of any interest in land, in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

4 Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, Article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which, for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

Valuation of relief in certain suits relating to land not to exceed the value of the land.

## COMMENTARY.

**Amendment.**—The words “subject to the control” in s. 3 have been substituted for the words “with the previous sanction” by Act XXXVIII of 1920.

**Rules for valuing land.**—Under s. 3 the Local Governments are empowered to make rules for determining the value of land for purposes of jurisdiction in suits mentioned in the Court-Fees Act, s. 7 paras (v), (vi) and (x) (d). See *Narayan Nair v. Cheria Kathiri Kutty*, 41 M. 721. For rules made under this section in the Punjab, Central Provinces and in Oudh, see Appendix. In the Punjab, under the rules framed under the section, a pre-emption suit in respect of revenue-paying lands is to be valued at 30 times the jama 16 P. R. 1908; 46 P. R. 1908. Even when the subject-matter of the suit is a specific plot and not a definite share of the holding, proportionate assessment is to be taken as the basis. *Arshad Ali v. Zorawar Singh*, 1926 Lah. 346. Market-value is to be taken where the property is a house, see 101 P.R. 1900; 24 All. 218. Market value at the time of the sale and not market value at the time



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As to jurisdictional value of a suit for *declaratory decree without consequential relief*, coming under Art. 17 of Sch. II, Court-Fees Act, see under that Article at pp. 594-602.

In a suit for *declaration* by the daughter of the last male holder by a pre-deceased wife, against his widow for certain declarations in respect of alienations made by her, the market-value of the properties covered by the alienations determines jurisdiction and not any notional value given by the plaintiff of her interest in the properties. *Dhanabaggiammal v. Mari Ammal*, 36 L. W. 483=1932 Mad. 671.

In a suit by an *unsuccessful claimant* for a declaration that the property attached is his own and could not be attached, the valuation for jurisdiction is the value of the property or the amount of the decree, whichever is less. *Moolchand Motilal v. Ram Kishen*, 55 All. 315=1933 A. L. J. 222=1933 All. 249 (F. B.). So also in a converse suit by attaching creditor see *Subramaniam v. Narasimham*, 56 M.L.J. 489=1929 Mad. 323. Where however in a suit by an unsuccessful claimant, the judgment-debtor is added as a party and there is a prayer that the plaintiff's title should be declared as against him, it is the value of the property which governs jurisdiction where it exceeds the amount of the decree. *Daw Dut v. Daw Kur*, 1932 Rang. 20. Where no objection was taken in execution proceedings, a suit for declaration that a property is not liable to attachment and sale in execution of a decree, cannot be treated as one under O. 21, r. 63, C. P. C., but it is in no way different from such a suit, where it is clear from the allegations made in the plaint and the relief sought therein that the sole object of the suit is to get a declaration that the property is not liable to attachment and sale in execution of the defendant's decree, and the judgment-debtor is made merely a *pro forma* defendant and no relief is claimed against him. The value in such a suit is not the value of the property but the amount of the decree. *Narain Das v. Thakur Prasad*, 1935 O. W. N. 305=1935 Oudh 271. For further commentaries on the point, see under Sch. II, Art. 17, Court-Fees Act, pp. 592-594.

As to jurisdictional value of a suit for *declaration regarding an adoption* see under Sch. II, Art. 17, Court-Fees Act, pp. 595-602.

As to value of a suit to set aside an award, see *Rachappa v. Sidhappa*, 43 B. 507; *Venkatachalam Pillai v. Srinivasa Ayyar*, 18 L. W. 399=1924 Mad. 84.

- British South Africa Co., connexion of, with government of Rhodesia, 11, 35-7, 223, 224, 738, 871.
- British South Africa Police, 996.
- British subjects, *see* British Nationality.
- Briton*, drill ship, 1011.
- Brodeur, Hon. L. P., Canadian Minister of Labour (1906-11), 949, 1192.
- Broome, Sir Napier, K.C.M.G., Governor of Western Australia (1883-9), views of, on responsible government, 26, 794.
- Broome, Hon. W., Judge of the Supreme Court of Natal, views on martial law, 197.
- Brougham, Lord, advocates break up of Empire, 1155.
- Brown, Hon. George, Prime Minister (2-4 August 1858), Minister (1864-5), Canada, 505, 853; refused dissolution by Sir E. Head in 1858, 159.
- Brownlee, Hon. J. E., Premier of Alberta, 249 n. 1.
- Bruce, Rt. Hon. Stanley Melbourne, M.C., Prime Minister of the Commonwealth (1923- ), 142, 231, 233, 242, 251, 266, 284 n. 1, 349, 895 n. 1, 917, 925 n. 1, 1017, 1152, 1196, 1213, 1221, 1241, 1244; urges vainly Canadian people to share in expense of defence of Empire, xv; his speech of 3 Aug. 1926 on Imperial relations, xvi, xix; his financial settlement with the States, 1249, 1250; selects Royal Commission to report on constitutional change, 1250.
- Bryce, Rt. Hon. James (later Viscount), British Ambassador to the United States (1907-13), promotes Canadian interests, 599, 857, 865.
- Buckingham and Chandos, Duke of, Secretary of State for the Colonies (1867-8), 507.
- Buller, Charles, M.P., influence on Lord Durham's report, 14, 1155.
- Burdwan, Maharajah of, represents India at Imperial Conference of 1926, 1231.
- Bureau of Entomology, 1199.
- Bureau of Mycology, 1199, 1200.
- Burke's Act (22 Geo. III, c. 75) as to judicial tenure, 1067, 1068, 1069, 1070, 1073.
- Burns, Rt. Hon. John, M.P., proves that emigration to the Dominions had in 1911 attained its full development, 1191.
- Burton, Hon. G. W., J. of the Appeal Court of Ontario, 513 n. 1, 514 n. 2.
- Bury, Lord, on Colonial relations, 1159.
- Business Profits Tax Bill, Newfoundland, 473.
- Butt, Isaac, M.P., Irish Parliamentary leader, complains of New Brunswick legislation as to Orangemen, 563.
- Buxton, Rt. Hon. S. (later Earl), Governor-General of the Union of South Africa, 1192.
- Byng, Lord, G.C.B., G.C.M.G., M.V.O., Governor-General of Canada (1921-6), unconstitutional attitude of, in 1926, has far-reaching effects, viii, xxv, 53 n. 3, 69, 77 n. 1, 106 n. 1, 129, 146-52, 154 n. 2, 159 n. 2, 278, 281 n. 4, 1103 n. 1, 1153 n. 1, 1225; succeeded by Sir A. Currie in command of Canadian forces, 979; unfortunately refuses to ask advice of Secretary of State as to his constitutional position, xxi, xxii.
- Bytown, Act incorporating disallowed, 776.
- Cabinet, misnomer in Imperial War Cabinet, 1196; phrase dropped in 1921, 1201; of United Kingdom, finally responsible for policy as opposed to Committee of Imperial Defence, 875, 876; admission of Dominion Ministers to share councils with, during war of 1914-19, 878.
- Cabinet of Governments, Sir R. Borden's erroneous phrase, 1196.
- Cabinets of the Dominions, 226-30; composition, 237-45; relation to Prime Minister, xvii, 230-7; relation to political parties, 245-74.
- Cable questions, considered by Imperial Conferences, 1177, 1178, 1179, 1191, 1200, 1207; *see also* Pacific Cable Board.
- Cadet training in the Union of South Africa, 994, 995.
- Cadets in Canada, 991.
- Cahan, Mr., K.C., inaccurate views of, on question of dissolution of Parliament, xvi.
- Caillaux, M., French Minister of Finance, secures very generous concessions by United Kingdom regarding French debt, 871 n. 1.
- Calcutta, statutory creation of Bishopric of, 1128.
- Camberley, Staff College at, Dominions and, 977.
- Campbell-Bannerman, Rt. Hon. Sir H., G.C.B., Prime Minister of the United Kingdom (1906-8), decides on responsible government for the Transvaal and Orange River Colony, 34.

As to general principles of valuation in all such cases see the observations of Wallace, J., in 50 Mad. 646 cited at p. 600 *supra*.

**5. (1)** The Local Government shall, before making rules under section 3, consult the High Court with respect thereto.

Making and enforcement of rules.

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official gazette.

**6.** On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort St George in Council, to which the Madras Civil Courts Act, 1873, extends, section 14 of that Act shall be repealed as regards that part of those territories.

Repeal of section 14 of the Madras Civil Courts Act, 1873.

## PART II.

### OTHER SUITS.

**7.** This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Extent and commencement of Part II

**8.** Where in suits other than those referred to in the Court-Fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause (d), court-fees are payable *ad valorem* under the Court-Fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

Court fee value and jurisdictional value to be the same in certain suits.

### COMMENTARY.

**Application of section.**—The meaning of s. 8 is that the value for purposes of jurisdiction shall follow the value for purposes of court-fee and not *vice versa*. *Gurdwara Mahant Jawal Singh v. Kala Singh*, 1931 Lah. 307; *Maung Nyi Maung v. Mandalay, Municipal Committee*, 12 Rang. 335 = 1934 Rang. 268; see also 56 Bom. 23; *In the matter of Kalipada Mnkharjee*, 34 C. W. N. 870 = 1930 Cal. 686; *Bura Mal v. Tulsi Ram*, 1927 Lah. 890; *Sailendra Nath*

- Cape of Good Hope, colony until 1910 : representative government, 11 ; responsible government, 27-30 ; legal basis of responsible government, 59 ; claims against the Crown, 102 ; Executive Council, 109 ; letters patent and power to legislate, 113 ; suspension of constitution, 214 ; Executive Council and Cabinet, 227 ; suspension of legislature, 256 ; legislative power, 312 ; constituent authority, 350 ; amendment of the Constitution, 355 ; privileges, 368, 372 ; language, 376, 377 ; House of Assembly, 401, 402 ; membership, 402 ; duration, 412 ; Upper Chamber, 441 ; relation of the two Houses, 497 ; reservation of bills, 753, 755 ; disallowance, 759 ; land control, 773 ; native affairs, 781, 797-9 ; British Indians, 823 ; judicial tenure, 1073 ; prerogative of mercy, 1118 ; Church questions, 1127-31, 1138 ; Province of the Union, Part IV, chap. iii.
- Cape Times*, erroneous views of, on Halibut treaty of 1923, 897.
- Cape Town, seat of legislature, 714.
- Capital cases, judge's reports in cases of, 1116 ; special responsibility given to Governor of Newfoundland and Governor-General of the Union regarding, 1110, 1114, 1118, 1119 ; in Southern Rhodesia and Malta, 1119.
- Capital of Union of South Africa, 714.
- Carleton, Sir Guy (Lord Dorchester), his pro-French policy in Quebec, 5, 6.
- Carlyle, Thomas, Imperial views of, 1155.
- Carmichael, Sir Thomas D. Gibson- (Lord Carmichael of Skirling), Governor of Victoria (1908-11), later of Madras and of Bengal, refuses to accept presents, 75 ; grants dissolution of Parliament to Sir T. Bent, 120, 277 ; acknowledgement of author's obligation to, xxv.
- Carnarvon, Lord, Secretary of State for the Colonies (1866-7, 1874-8), 26, 218, 276, 278, 322, 464, 475, 513 n. 1, 537, 561, 578, 599, 747, 868, 1115, 1138.
- Caroline and Marshall Islands, obtained by Germany in 1880, 869 ; pass to Japan in 1919 under Mandates, 882.
- Carriage of Goods by Sea Act*, 1924, Imperial, 946 n. 2, 1240.
- Carrington, Earl of (later Marquis of Lincolnshire), Governor of New South Wales (1885-90), declines to accept presents, 76 ; refuses dissolution to Sir J. Robertson, 163 ; swamps New South Wales Council, 453.
- Carter, Hon. Sir Frederic Bowker Terrington, Premier (1865-70, 1874-7), and later C.J. of Newfoundland, 324.
- Cartier, Hon. Sir G. E., Bart., one of the Fathers of Canadian federation, and colleague of Sir John Macdonald (1854-62, 1864-73), 505.
- Cartwright, Rt. Hon. Sir Richard, G.C.M.G., Minister of Finance (1873-8), Minister of Trade and Commerce (1896-1911), appointed in 1902 to Privy Council but never sworn, 864 ; views of, on Canadian Senate, 465.
- Casault, Hon. L. E. N., J. of the Supreme Court, Quebec (1870-94), C.J. (1894-1904), Quebec, proposal to remove from professorial chair at Laval, 1133 n. 2.
- Cashin, Hon. Sir Michael, Prime Minister of Newfoundland in 1918, 273.
- Cathcart, Earl of, Governor-General of Canada (1845), 17.
- Caucus, selection of Premier and determination of policy by, in Australia, 261, 262, 273.
- Cave, Viscount, Lord Chancellor, his quite erroneous view of Irish Free State constitution, xxiii, 1090.
- Cecil, Lord, on League of Nations, 1209.
- Censure of Governor (cf. Lord Milner's case, *Hansard*, ser. 4, cxxiv, 464 ff., 1410 ff.), 118-22.
- Census and Statistics, Commonwealth legislative power as to, 626.
- Central Australia, administration of, 686.
- Central Court of New Guinea, appeal lies to High Court of Commonwealth (but not as a federal Court, but under the powers of the Mandate, 37 C.L.R. at p. 450), 665 n. 6.
- Central Fund Acts*, Irish Free State, 366 n. 2.
- Central legislature, as defined in *Interpretation Act*, 1889 (Imperial), for what purposes applicable to Commonwealth of Australia, 620.
- Certificates for masters and mates, colonial investigations as to, 943.
- Certificates of birth, legal evidence in Dominions, under Imperial legislation, 1037.
- Cession, power of Crown to legislate for colony by, 4, 5.
- Cession of territory by Crown (Parliamentary sanction insisted on in 1904 by Mr. Balfour's Ministry against King Edward VII), 344.

under s. 7 cl. (iv) Court Fees Act, pp. 66-69. See also the cases cited under S. 1, *supra*.

In a suit for declaratory decree where consequential relief is prayed, the plaintiff is entitled to put his own valuation subject to ss. 4 and 9 of this Act but he must put one single and entire sum as representing the value of all the reliefs and cannot put one valuation for purposes of court-fee and another for purposes of jurisdiction. *Basanta Kumari Debya v. Nalini Nath Bhattacharjee*, 57 C.L.J. 465; see also 36 All. 500; 47 All. 501; 46 All. 419.

S. 8 of the Suits Valuation Act takes effect as against s. 14 of the Madras Civil Courts Act and where such a suit in respect of land worth Rs. 8,000 was valued at Rs. 4,000, and was disposed of by the sub-court, the *forum* of appeal is determined by the latter value, and an appeal lies only to the District Court and not to the High Court. *Official Reciever of Ramnad v. Arunachalam Chettiar*, 65 M. L. J. 420 = 38 L. W. 447 = 1933 Mad. 721.

**Cancellation of documents.**—In a suit for cancellation of documents, although the value put by the plaintiff on his suit *prima facie* determines the jurisdiction, the plaintiff cannot place an arbitrary value. *Maung Noe v. Maung Kha Pu*, 1933 Rang. 40. But there is a conflict of decisions as to the power of the court to revise the plaintiff's valuation in such classes of suits, for which see under s. 7 cl. (iv) Court Fees Act at pp. 66-69, *supra*.

**Cancellation of decrees.**—See under s. 7 cl. (iv) (c) Court Fees Act, pp. 107-109 and 113-117.

**Suit for injunction.**—See pp. 119-120.

**Suit for accounts.**—In a suit for accounts, the jurisdiction value and the court-fee value are the same. *Iswarappa v. Dhanji*, 56 Bom. 23 = 1932 Bom. 111; see also *Mohan Lal v. Nihal Chand*, 1935 Lah. 40; *Ma Thin On v. Ma Ngwe Hmon*, 12 Rang. 512 (Administration suit); *Muhammad Abdul Majid v. Ala Bux*, 47 All. 534. See also at p. 125, *supra*. As to value of a suit for dissolution of partnership, see *Arura Mal Uttam Chand v. Makhani Mal Anir Chand*, 1930 Lah. 725. As to the power of the plaintiff to fix the value, see under s. 7 cl. (iv) (f) of the Court Fees Act, pp. 125-126. As to valuation of appeals in suits for accounts, see pp. 127-144.

As to the power of a court to pass a decree in a suit for accounts, for a sum in excess of its pecuniary jurisdiction, see under s. 11 of the Court Fees Act, pp. 244-253 *supra*. As to the view of the Patna High Court on the point, see the recent decision in *Mt. Urehan Kuer v. Mt. Kabutri*, 13 Pat. 344 = 1934 Pat. 204 (S. B.), holding that in a suit for partnership accounts, the jurisdiction of the court is not ousted by the court ultimately finding that a decree for a sum exceeding the limits of its pecuniary jurisdiction should be given to the plaintiff.

- Civil or Public Service Commissions, in Dominions, 290-7.
- Civil servants as candidates for Parliament (resignation on nomination not required in New South Wales, Western Australia; proposal to this end rejected in Victoria in 1926), 295.
- Civil Service Act*, 1884, New South Wales, 288 n. 1.
- Civil Service in the Dominions, Part II, chap. viii; in Canada as affected by federation, 577; in the Commonwealth of Australia as affected by federation, 673; in the Union of South Africa as affected by Union, 731, 732.
- Civil uniforms (revised by Crown in Aug. 1927), 1026.
- Claims against Dominion, State or Provincial Government, 100-3.
- Claims against Imperial government arising out of Colonial affairs, where justiciable, 102, 103.
- Claims against the Government and Crown Suits Act*, 1912, New South Wales, 671.
- Clarendon, Lord, Secretary of State for Foreign Affairs, desires to see Canada independent, 1156.
- Clarendon, Lord, reports on Canadian visit (1926) in connexion with emigration, 1239 n. 1.
- Clarke, Sir George Sydenham (Lord Sydenham), G.C.S.I., G.C.M.G., G.C.I.E., G.B.E., Governor of Victoria (1901-4), criticized for remarks on defence, 279 n. 2.
- Class Arcas Bill, Union of South Africa, 835; dropped as result of Conference of 1927, App. B.
- Clemenceau, Georges, Premier of France, represents France at Peace Conference, 1195; one of Council of Four there, 880.
- Closing of drifts in South Africa in 1895, nearly results in war, 705.
- Closure (may be moved in Victorian Council if supported by six members; 21 Sept., 1926), 386, 387.
- Coaker, W. F., President of the Fishermen's Union, Newfoundland, 134; alleged connexion with movement for federation with Canada, 510.
- Coal Mines Regulation Act*, 1899, British Columbia, anti-Japanese clauses of, 819.
- Coalition governments, in Dominions, xxi, 233, 246, 251, 252, 255.
- Coasting trade, Dominion power to regulate their, 942, 945; special authority of the Commonwealth as to, 645, 646; suggested extension of term to cover inter-imperial trade, 1180.
- Coates, Rt. Hon. J. G., Prime Minister of New Zealand (1925- ), 255, 908, 917, 1165, 1244.
- Cobalt case, in Ontario (Macphail, *Canada University Magazine*, x, 202 ff.), 567.
- Cobden, Richard, hostility of, to Colonial connexion, 1155.
- Cockburn, C.J., charge in *The Queen v. Nelson and Brand*, 97 n. 3.
- Cockshutt, H., Lieutenant-Governor of Ontario, his attitude to ministry in defeat, 179.
- Coderre, J., on police inefficiency in Montreal, 208 n. 1.
- Coinage, Imperial and local, 86; Imperial control of, 938-41; discussion of decimal, 1192.
- Coinage Act*, 1870, Imperial, amended in 1891 and 1893, 86, 938.
- Coinage Act*, 1909, Commonwealth of Australia, 629 n. 2.
- Coinage Act*, 1926, Irish Free State, 940.
- Coinage (Colonial Offences) Act*, 1853, Imperial, 309, 940 n. 1, 1037, 1086.
- Colborne, Sir John, Lieutenant-Governor of Upper Canada (1828-38), establishes rectories, 1137.
- Cold storage, statistics of food stuffs in, to be made available if possible, 1243.
- Colebrooke, Sir William, Lieutenant-Governor of New Brunswick, 20.
- Colenso, Bishop, his disputes with the Bishop of Cape Town, 1128-31.
- Collier, Hon. P., Premier of Western Australia (1924- ), 243; his government sustained at the General Election of 1927, xx.
- Collision regulations, validity of local, 950 n. 3.
- Collisions, and salvage, conventions on, 1910, application of, to Dominions, 950, 951.
- Collisions, Dominion Courts' jurisdiction in cases of, 943, 1082.
- Colombia, treaties of 16 Feb. 1866 and 20 Aug. 1912 with, 849, 875.
- Colonial Boundaries Act*, 1895, Imperial, 330, 355, 511, 608, 679, 689, 710, 1033.
- Colonial Clergy, 1131, 1132.
- Colonial Clergy Act*, 1874, Imperial, 1132 n. 1.
- Colonial Conference, 1887, 112, 1004, 1176, 1177.

framed have the force of law. It is not for courts to consider whether in the case of particular classes of suits, the High Court and the Local Government have exercised their discretion wisely. *Ganpat Rao v. Laxmibai*, 43 I. C. 64 = 15 N. L. R. 24.

The fee fixed in Art. 17 of Sch. II is only provisional and if and when rules are framed for computing the value for court-fees in any or all the cases mentioned therein, the fee will have to be levied accordingly. *Ganpat Rao v. Lakshmi Bai*, 43 I. C. 64 (Nag.); see also *Amdu v. Pessi*, 1930 Nag, 20; *Nok Sing v. Bholusing*, 1930 Nag. 73.

In the Punjab a suit to get a wall demolished and for injunction falls under R. 4 of the Lahore High Court Rules. *Munshi Ram v. Ram Saran*, 1934 Lah. 796. But that rule is not applicable to a suit for injunction restraining the Municipal Committee from demolishing a *thara* not constructed in accordance with the sanction. *Dongarsi Das v. The Municipal Committee, Fazilka*, 11 Lah. 38 = 1929 Lah. 556.

In Central Provinces, a suit for declaration regarding an adoption is to be valued at the market-value of the property, title to which would be affected by it, if it exceeds Rs. 400 in value. *Harihar Rao v. Salu Bai*, 1927 Nag. 256; see also *Amdu v. Pessi*, 1930 Nag. 20; *Nok Singh v. Bholusingh*, 1930 Nag. 73.

Where no rules have been framed, the Court-Fees Act would apply and the fees prescribed in the Schedules to that Act have to be paid. *Varadaraja v. Arunuugam*, 22 L. W. 15 = 1925 Mad. 1216.

The Calcutta High Court has held that in cases falling under s. 7 cl. (iv) Court Fees Act, the Court has power to correct the plaintiff's valuation, but so long as there are no rules made under s. 9 of the Suits Valuation Act, the Court would have no standard before it on which it may regard the plaintiff's valuation as an under-valuation and its powers of correction would have to be exercised on that footing. *Narayangunj Central Co-operative Sale and Supply Society v. Mafizuddin Ahmed* 61 Cal. 796 = 1934 Cal. 448 (F. B.) See also *Chinnammal v. Madarsa Rowther*, 27 Mad. 480.

As regards value in suits for restitution of conjugal rights, rules have been framed only in the Punjab. Ancillary reliefs may be ignored. *Nathur v. Musst Chuhri*, 52 I. C. 101 = 20 P. L. R. 1919. In other provinces, the plaintiff's valuation is accepted unless it is not *bona fide* in the opinion of the court. See *Jashoda Chhotu v. Chhotu Mannu*, 11 Bom. L. R. 1352; *Jan Mahomed Mandel v. Meshar Bibi*, 34 Cal. 352; *Zair Hussain Khan v. Khurshed Jan*, 28 All. 545.



- bers of Parliament, 405, 406; duration, 411; payment, 413; electoral matters, 416; redistribution, 421; Upper Chamber, 430-2; relations of the two Houses, 137-9, 491-6; reservation of bills, 751, 752; disallowance, 759; British Indians, 815; Kumatiks, 837; treaty legislation, 921, 922; preferential tariff system, 931, 933; currency, 938, 939; merchant shipping, Part V, chap. vii; copyright, 958; military defence, 971, 974, 984-8, 991, 992; naval defence, 1001, 1004, 1005, 1008, 1007, 1008, 1009, 1011, 1012, 1014, 1015, 1017; naturalization, 1042, 1043; citizenship, 1047; mandate, 1017-35; judicial tenure, 1070, 1071 n. 3; Admiralty jurisdiction, 1083; appeal, 1091.
- Commonwealth of Australia Constitution Act, 1900*, Part IV, chap. ii; s. 5, 313, 621, 946, 950, 1005.
- Commonwealth and States, principles of relations of, 605-61; proposals of 1927 for new financial relations, 1249, 1250.
- Commonwealth Conciliation and Arbitration Act, 1904-21*, 627 n. 4, 640-5.
- Commonwealth Conciliation and Arbitration (Amendment) Act, 1926*, 700.
- Commonwealth Electoral Act, 1918-22*, 397, 421 n. 1.
- Commonwealth of Australia and New Zealand legislation on shipping, conflicts of, 946, 947, 948.
- Commonwealth Shipping Board, 1014.
- Communication, *see* Channel of Communication.
- Companies, federal and provincial legislative powers in Canada as to, 547-9; federal and State legislative powers in Australia as to, 630, 640; provincial powers as to taxation of financial, Union of South Africa, 723.
- Companies, uniformity of law as to, in the Empire, 1183, 1184, 1192, 1198.
- Company legislation, non-allowance of, 767, 768.
- Comparison of Australian and Canadian federation, 605-8.
- Comparison of British and Dominion expenditure on defence, 1017.
- Compensation, when necessary in taking property, in Canada, 531; in Northern Ireland, 319; in the Irish Free State, 318.
- Comptroller and Auditor-General, Irish Free State, 366 n. 2.
- Compulsory arbitration clause of Statute of Permanent Court of International Justice, 916; not to be accepted without consultation by any Dominion, 1240.
- Compulsory enfranchisement of North American Indians, proposal for, 786, 787.
- Compulsory enrolment of voters, 419, 420.
- Compulsory licences under *Copyright Act, 1911*, 1099.
- Compulsory service in Canada, during war of 1914-18, 981-3; in Commonwealth of Australia, 984-8; in Newfoundland, 983, 984; in New Zealand, 988, 989; in Union of South Africa, 989; untoward effect on proposals for, of Imperial Federation propaganda, vii.
- Compulsory training, in force in the Commonwealth of Australia, New Zealand, and the Union of South Africa, Part V, chap. x, § 3; in Southern Rhodesia, 1248, 1249.
- Compulsory voting, in Commonwealth of Australia, 397 (adopted in Victoria in 1926); in Queensland, 399, 420.
- Compulsory Voting Act, 1926*, Victoria (based on Commonwealth Act, penalty £2), 422 n. 2.
- Concealment of vital foreign issues from Dominions, 877 n. 2.
- Conception Bay, part of Newfoundland territory, 325.
- Conditional contraband, recognition of food as, causes Dominion objections to Declaration of London, 873.
- Conditions imposed by Governor in connexion with dissolution, 161, 162; difficulty of enforcing shown in 1914 in Tasmania, 170, 171.
- Conduct of business of Cabinet with Governor, 274-81.
- Conference between Houses of Parliament, 385.
- Conference of 1901 on Judicial Appeals, 1100.
- Conference of Labour Parties of the Empire, Australian indifference to emigration at, 775.
- Conference on Naval and Military Defence of 1909, 976, 1006, 1007, 1183, 1190.
- Conference on pollution of water by oil, Washington, 1926, 1240.
- Conference on Safety of Life at Sea, 1913-14, separate representation of Dominions at the, 860, 876.
- Conferences of Premiers in Australia

direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of British India, and shall come into force on the first day of July 1887.

#### COMMENTARY.

**Code of Civil Procedure.**—The reference to ss. 578 and 622 of the old Code must be read as references to the corresponding provisions of the present Code, *viz.*, ss. 9 and 115.

**Scope of the section.**—The section covers all cases of erroneous valuation. *Aklemannessa v. Mahomed Hatem*, 31 Cal. 849 (Arbitrary valuation given in a case which is incapable of valuation). The section applies also to erroneous valuation caused by a wrong application of the sections of the Court-Fees Act. *Anmalu Ammal v. Krishnan Nair*, 52 I. C. 715 = 30 M. L. J. 38; see also *Krishnasami v. Kanakasabai*, 14 Mad 183; *Nana v. Mulchand*, 21 I. C. 918 (Nag.); *Balkrishna v. Jankibai*, 44 Bom. 331. S. 11 includes all cases of erroneous valuation and does not make any distinction between cases in which the valuation depends upon rules having the force of law and those in which the valuation is determined otherwise. *Mt. Jagatram Kuer v. Mt. Munder Kuer*, 13 Pat. 290 = 1934 Pat. 240; see also *Sadar Khan v. Musst Aisha Bibi*, 6 Lah. 105 = 1925 Lah. 290 (F. B.) overruling 132 P. R. 1894 and 35 P. R. 1901.

**Object of the section.**—The object of the section is to provide a machinery for curing the original want of jurisdiction in certain circumstances. *Per* Coutts Trotter, J. in *Kelu Achan v. Parvathi Nelhiyar*, 46 Mad. 631 = 18 L. W. 1 = 45 M. L. J. 135 = 1924 Mad. 6 (F. B.).

**Application of section.**—This section is not applicable to validate arbitration proceedings in a suit pending before a court having no pecuniary jurisdiction where objection had been taken by the defendant in time but was not decided by the court. *Amir Chand v. Buti Shah*, 1930 Lah. 195. The application of the section is not confined to cases of final disposal. Even where the lower appellate court has remanded a case to the first court for a finding, without pecuniary jurisdiction to hear the appeal, the defect is cured by the section. *Raman v. Secretary of State for India in Council*, 24 Mad. 427.

- Controller of Customs and Inland Revenue, as non-Cabinet Ministers in Canada in 1892-5, 237, 238.
- Convention, as basis of responsible government, Part I, chap. ii; Part II, chap. vii.
- Convention and Statute on Freedom of Transit, 1921, 885 n. 3.
- Convention and Statute on the International Régime of Maritime Ports, 1923, 885 n. 3.
- Convention as to conditions of residence and business, with Turkey, 852 n. 3.
- Convention as to disposal of real and personal property, with United States, Canadian accession to, 921.
- Convention as to mail ships, 1890, application of, to Australian Colonies, 922.
- Convention as to prohibition of night work of women, Canada's attitude to, 921.
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- Cook, J., removed from judicial office in Trinidad, 1106 n. 3.
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- Corfu, Italian attack on in 1923, 598.
- Coronation of King Edward VII in 1902, State Premiers invited through Governor-General refuse to attend, 615; of George V, invited through Governors in 1910, 615 n. 3.
- Corporations, proposed extension of Commonwealth power as to, 692, 693, 698; see also Companies.
- Correspondence rules, 76-9; see also Channel of Communication.
- Corruption engendered by political honours, 1022.
- Cosgrave, W. T., President of the Irish Free State (his government sustained by casting vote of chairman on 16 Aug. 1927), 245, 1223, 1224; obtains a dissolution of Parliament in Aug. 1927, 1254, 1255.
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- Council of Defence, Irish Free State, 997, 998.
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*Nyun*, 1929 Rang. 228. See also *Shankar v. Trilok Nath*, 11 Lah. 15=1929 Lah. 509; *A Chelmayya v. A. Lakshmi Devamma*, 1925 Mad. 171; *Dinesh Chandra v. Sarnamoyi*, 1 C. W. N. 136. The appellate court is not justified in directing the plaint to be returned for presentation to proper court on the ground of over-valuation unless it is also satisfied for reasons to be recorded in writing that the over-valuation has prejudicially affected the disposal of the suit on the merits. *Raghunandan Prasad v. Ajodhya Singh*, 1930 All. 869; See also *Wahidulla v. Kanhiya Lal*, 25 All. 174. The validity of the decree is not affected by the mere fact that a suit has been over-valued or under-valued, unless the disposal of the suit on the merits has been prejudicially affected by that. *Mool Chand Motilal v. Ram Kishen*, 55 All. 315=1933 A. L. J. 222=1933 All. 249 (F.B.) See also *Naran Chandra Ghose v. Rangalal Ghose*, 37 C.W.N. 764; *Budha Mal v. Ralia Ram*, 9 Lah. 418=1928 Lah. 825. A suit for maintenance valued at Rs. 3,000 having been disposed of on the merits, and an appeal having been filed against the decree, the appellate court should not entertain an objection to jurisdiction on the ground that the value was Rs. 18,000 as it was cured by waiver. *Hamir Kaur v. Court of Wards*, 33 P. L. R. 634=1932 Lah. 538.

The question whether the want of pecuniary jurisdiction has prejudicially affected the disposal of the case on the merits or not must be decided in the circumstances of each case. *Sheoraj Singh v. Phulbasa Kuer*, 28 O. C. 203=1925 Oudh 561. The reference in the section to the disposal of the suit being prejudicially affected on the merits has nothing to do with the different rules of procedure relating to the filing of appeals. The argument that an under-valuation resulting in the trial of the suit before the District Munsiff, must be prejudicial to the unsuccessful party, because an appeal from him lies to a District Court and then to the High Court by Second Appeal where questions of fact are not open to discussion, whereas, if the suit has been brought originally before the Sub Court it would come by first appeal to the High Court, where questions of fact are open to discussion is untenable. *Kelu Achan v. Parvathi Nelhiyar* 46 Mad. 631=45 M. L. J. 135=18 L. W. 1=1924 Mad. 6 (F. B.); *Musa Imran v. Bhagawan Das*, 1927 All. 359; see *Narasimham v. Subramaniam*, 1927 Mad. 201 holding that the mere fact that a party was deprived of a right of appeal on facts before the High Court cannot be deemed to have prejudicially affected the disposal of the appeal on the merits. See also *Mt. Ilahi Jan v. Rahmarullah*, 1928 Lah. 670. But see *Banni v. Mangu*, 114 I. C. 440 (Lah.) and also the cases cited below.

Where if the appeal were properly valued, it would have come directly to the High Court, where it would be decided by a Bench of two judges as a first appeal, the under-valuation resulting in its disposal by the District Judge must be deemed to have prejudicially affected the disposal of the appeal on the merits. *Rukmin Das v. Deva Singh*,

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- Cullen, Hon. Sir William P., K.C.M.G., declines advice of Ministers as to prorogation of Parliament, 174, 175.
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- Currency notes, Newfoundland legislation as to, 941.
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- Curzon, Marquis of, Secretary of State for Foreign Affairs, had policy of, in respect of Lausanne treaty, 904, 905, 1200; disapproves separate diplomatic representation of Dominions, 895 n. 1.
- Custody of idiots and lunatics, formerly delegated to Governor, 111.
- Customs Act*, 1901, Commonwealth of Australia, 493 n. 1, 600.
- Customs and excise, solely under the Commonwealth of Australia, 625, 627, 1250.
- Customs Consolidation Act*, 1876, Imperial, 327, 957 n. 1, 1037.
- Customs executive, Imperial control of (Beer, *British Colonial Policy*, 1754-65, pp. 231 ff., 298 ff.); surrendered (1851-5; *Parl. Pap.*, Feb. 4, 1851, p. 4; 1 July 1852, p. 97; Hannay, *New Brunswick*, i, 410 ff.; ii, 23, 172; Grey, *Colonial Policy*, ii, 370, 379), 927.
- Customs duties, Dominion control over, conceded by Imperial Government, 927-32; nature of, divergence of judicial views as to, 530.
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- Dandurand, Hon. R., Senator of Canada, 466.
- Dardanelles, Dominion forces at the, 987, 988.
- Dardanelles Commission, views of, as to Committee of Imperial Defence, 975.
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- Death duties, Dominion and provincial powers of imposing, 334.

case, the proper course seems to be for the appellate court to set aside the decree of the trial court or the lower appellate court as the case may be, and direct it to return the plaint or the memorandum of appeal to be presented to the proper court.

Where the pecuniary value of the suit is beyond the jurisdiction of the lower court, but the appellate court decides to ignore the objection as to jurisdiction and proceed with the appeal, it can still order payment of deficit court-fee payable in the lower court on the correct valuation under s. 12 of the Court fees Act. See *Moideen Kani v. Nagoor Meera*, C. R. P. Nos. 866 and 1684 of 1932 (Mad.) decided on 19-1-34 (unreported) cited at pp. 286-287, *supra*.

**12.** Nothing in Part I or Part II shall be construed to affect the jurisdiction of any court—

Proceedings pending  
at commencement of  
Part I or Part II.

(a) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(b) with respect to any appeal arising out of any such suit.

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- De Jure Act*, 1900, Commonwealth of Australia, 629 n. 2.
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- Devlin, Joseph, leader of Nationalists in Northern Ireland, 258.
- De Wet, General, rebels against British Crown, 202.
- Dibbs, Hon. Sir George, K.C.M.G., Premier of New South Wales (1885, 1889, 1891-4), suggests union of New South Wales and Victoria, 602.
- Dicey, Professor, A. V., K.C., views of, on martial law, 192; his *Conflict of Laws*, ed. 3 (1922) and 4 (1927), by author, used in this work, xxvi n. 1.
- Dirta*, judicial, distinguished from *ratio decidendi*, not binding on other Courts, 1003 n. 6.
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- Dilke, Rt. Hon. Sir C. W., Bart., M.P., views of, on Imperial issues, 1157, 1169.
- Dinizulu, chief of Zululand, unfair attitude of Natal Government towards, 220; special court for trial of, 1092.
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- Dispatches, formal treatment of, 77, 78.
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## BENGAL ACT IV OF 1922.

[As amended by Amendment No. II Act, 1922].

## THE BENGAL COURT-FEES (AMENDMENT) ACT, 1922.

[PUBLISHED IN THE CALCUTTA GAZETTE, EXTRAORDINARY OF THE  
29TH MARCH, 1922.]

*An Act to amend the Court-fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, with reference to the scale of court-fees in Bengal.*

Whereas it is necessary to revise the scale of court-fees for Bengal, by amendment of the Court-Fees Act 1870, and the Presidency Small Cause Courts Act, 1882, in their application to Bengal, in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Court-Fees (Amendment) Act, 1922.

(2) It extends to the whole of Bengal.

(3) It shall come into force on the first day of April, 1922.

2. The Court-fees Act, 1870, as amended by subsequent legislation, and the Presidency Small Cause Courts Act, 1882, as amended by subsequent legislation, shall be amended, in their application to Bengal, in the manner hereinafter provided.

3. In section 18 of the Court-Fees Act, 1870, for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted.

4. In item viii in section 19 of the same Act for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

5. For Article 1 in the first schedule to same Act the following shall be substituted, namely :—

" 1. Plaint, written statement, pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed seventy-five rupees, for every five rupees or part thereof of such amount or value ;	Six annas.
	and when such amount or value exceeds seventy-five rupees, for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees ;	Eight annas.



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- Downie Stewart, Hon. W., now Minister of Customs, New Zealand, views on Imperial unity, 884.
- Drafting of public Bills, 384.
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- Draper, Hon. W. Henry, C.B., Prime Minister of the Province of Canada (1843-7), Chief Justice of the Court of Common Pleas (1856-63), of the Court of Queen's Bench (1863-8), Upper Canada, Chief Justice of Ontario, (1868-77), judicial views of, 342, 343, 567.
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- Dried fruit industry, proposed preference to benefit, 1214.
- Droit de prière*, not to be exercised by Governors save on delegation, 93.
- Droits of Admiralty and the Crown, 1083.
- Drury, Hon. C., fall of his ministry in Ontario in 1923, 179, 248, 260, 266.
- Drysdale, James, acknowledgement of author's obligations to the late, xxv.
- Dual position of the Governor, 117-22.
- Dudley, Earl of, Governor-General of the Commonwealth of Australia (1908-11), criticized for support of Ministers, 279.
- Dufferin, Marquis of, Governor-General of Canada (1872-8), 107, 111, 125, 126, 135, 179, 578, 1119.
- Duffy, Hon. Sir C. Gavan, K.C.M.G., Premier of Victoria, is refused dissolution by Lord Canterbury, 160; referred to, 333, 598, 869.
- Duffy, Hon. E. Gavan, J. of the High Court of Australia, 644, 651, 668.
- Dundonald, Earl of, removal from commandership-in-chief in Canada in 1904, 276, 969, 970.
- Dunsmuir, Hon. J., Lieutenant-Governor of British Columbia (1906-10), 750.
- 'Dunster' force, 983, 987.
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- Duplication of Pacific Cable between Bamfield, Fiji, and Fanning Island, Canadian protests against, 1245.
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- Dutch language, official use of, in South West Africa, 1061.
- Dutch Reformed Church, Union of South Africa, refusal of equality to natives in, 799; statutory regulation of, 1135, 1136.
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- Early Closing Act Amendment Act*, 1904, Western Australia, anti-Asiatic clauses of, 817.
- Early views of Imperial relations, 1154-7.
- East Africa, campaign in, 989; new British policy of development of, in interests of European as opposed to native population or Indian immigrants, 1248.
- Eastern Districts of the Cape, Court of the, now local division of Supreme Court, 727, 728.
- Eastern Greenland, advantages secured for all British subjects in, 902.
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- Education, Canadian legislative powers as to, 520, 521, 537-9; in the Yukon, 585; denominational issues as to, 1139, 1140, 1141; use of Dutch language in, Union of South Africa, 736-8.
- Educational costs in Union of South Africa, 721, 722.
- Edwards, Maj.-Gen. (later Lieut.-Gen.) Sir J. Bevan, K.C.B., reports on Australasian defence, 601, 970.
- Effect of treaties on law, 844, 845.
- Egypt, British policy as to, not really shared by Dominions, 907; discussed at Imperial Conferences, 1210, 1223, 1232; Orders in Council as to, apply to all British subjects, 1039 n. 5; recognition of independence of, 1232; services of Dominion forces in, 988, 989; suggested air services from, to India and Australia, and to South Africa, 1243, 1244.
- Eight Hours Day Convention, 1920, attitude of Canada towards, 921.

6. In the third column in Article 6 in the same schedule to the same Act,—

(a) for the words "Four annas," opposite clause (a) in the second column, the words "Six annas" shall be substituted; and

(b) for the words "Eight annas," opposite the first item in clause (b) in the second column, the words "Twelve annas" shall be substituted, and for the words "One rupee," opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

7. For the entries above the proviso in the second column, and for the entries in the third column in Article 11 in the same schedule to the same Act, the following shall be substituted, namely:—

<p>"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, <i>on such amount or value up to ten thousand rupees,</i>"</p>	<p>Two per centum * *</p>
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and

<p>when such amount or value exceeds ten thousand rupees, * * <i>on the portion</i> of such amount or value which is in excess of ten thousand rupees, <i>up to fifty thousand rupees.</i></p>	<p>Three per centum * *</p>
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and

<p>when such amount or value exceeds fifty thousand rupees * * <i>on the portion</i> of such amount or value which is in excess of fifty thousand rupees, <i>upto a lakh of rupees.</i></p>	<p>Four per centum * *</p>
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and

<p>when such amount or value exceeds a lakh of rupees, <i>on the portion</i> of such amount or value which is in excess of a lakh of rupees,</p>	<p>Five per centum * *</p>
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[Further amended by Act XI of 1935—  
see *infra*.]

8. Omitted—[Art. 12 of Sch. I amended by this section is re-enacted by s. 5 of Act XI of 1935; see *infra*.]

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same schedule to the same Act, the table set forth in the schedule to this Act shall be substituted.

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"11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—

(a) (i)	to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority.	Eight annas,
(ii)	to any Civil Court other than a High Court.	One rupee.
(b)	to a Chief Controlling Executive or Revenue Authority.	Two rupees.
(c)	to a High Court	... Five rupees."

14. Above the words "Five rupees," where they occur in the third column, opposite Articles 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted.

15. (1) The words "Ten rupees" in the third column, opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said article,—

- (a) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted; and
- (b) opposite entries iii and v, the words "Twenty rupees" shall be inserted.

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

- (1) in clause (a) for the words "five hundred rupees" the words "fifty rupees" shall be substituted;
- (2) after clause (a) the following shall be inserted, namely :—
  - "(b) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees;"
- (3) clause (b) shall be renumbered as clause (c) and in that clause as renumbered for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted.

- 393, 394; in Newfoundland, 397; in Australia, Commonwealth and State, 397, 398, 399, 400; in New Zealand, 400; in Southern Rhodesia, 403; in Northern Ireland and Irish Free State, 403, 404; not in Malta, 403; nor in Union of South Africa, 402.
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- Fielding, Rt. Hon. W., Premier of Nova Scotia (1884-96) and Canadian Minister of Finance (1896-1911, 1921-4), 234 n. 1, 513, 539, 858.
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- Financial provisions, in South Africa on Union, 732-4.
- Financial questions, full control over, essential to self-government, 779; relations of Imperial and Dominion Governments as to, 776-9.
- Financial Relations Act, 1913, Union of South Africa, 718, 732.
- Financial relations of Dominion and provinces in Canada, 574-7.
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- Fisher, Rt. Hon. A., Prime Minister of the Commonwealth (1908-9, 1010-13, 1914-15), High Commissioner (1916-21), is refused a dissolution in 1909, 164; secures office in 1910, 165; referred to, 137, 139, 232, 242, 251, 264, 674, 836, 874, 911, 1162, 1193.
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## THE COURT-FEES ACT

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
380	390	43 14	770	780	87 12
390	400	45 0	780	790	88 14
400	410	46 2	790	800	90 0
410	420	47 4	800	810	91 2
420	430	48 6	810	820	92 4
430	440	49 8	820	830	93 6
440	450	50 10	830	840	94 8
450	460	51 12	840	850	95 10
460	470	52 14	850	860	96 12
470	480	54 0	860	870	97 14
480	490	55 2	870	880	99 0
490	500	56 4	880	890	100 2
500	510	57 6	890	900	101 4
510	520	58 8	900	910	102 6
520	530	59 10	910	920	103 8
530	540	60 12	920	930	104 10
540	550	61 14	930	940	105 12
550	560	63 0	940	950	106 14
560	570	64 2	950	960	108 0
570	580	65 4	960	970	109 2
580	590	66 6	970	980	110 4
590	600	67 8	980	990	111 6
600	610	68 10	990	1,000	112 8
610	620	69 12	1,000	1,100	120 0
620	630	70 14	1,100	1,200	127 8
630	640	72 0	1,200	1,300	135 0
640	650	73 2	1,300	1,400	142 8
650	660	74 4	1,400	1,500	150 0
660	670	75 6	1,500	1,600	157 8
670	680	76 8	1,600	1,700	165 0
680	690	77 10	1,700	1,800	172 8
690	700	78 12	1,800	1,900	180 0
700	710	79 14	1,900	2,000	187 8
710	720	81 0	2,000	2,100	195 0
720	730	82 2	2,100	2,200	202 8
730	740	83 4	2,200	2,300	210 0
740	750	84 6	2,300	2,400	217 8
750	760	85 8	2,400	2,500	225 0
760	770	86 10	2,500	2,600	232 8

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- Gladstone, Viscount, P.C., G.C.M.G., Governor-General of the Union of South Africa (1910-14), misuse of powers under royal warrant to convene Courts Martial, 201.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
19,500	20,000	1,200 0	50,000	55,000	2,137 8
20,000	21,000	1,230 0	55,000	60,000	2,175 0
21,000	22,000	1,260 0	60,000	65,000	2,212 8
22,000	23,000	1,290 0	65,000	70,000	2,250 0
23,000	24,000	1,320 0	70,000	75,000	2,287 8
24,000	25,000	1,350 0	75,000	80,000	2,325 0
25,000	26,000	1,380 0	80,000	85,000	2,362 8
26,000	27,000	1,410 0	85,000	90,000	2,400 0
27,000	28,000	1,440 0	90,000	95,000	2,437 8
28,000	29,000	1,470 0	95,000	1,00,000	2,475 0
29,000	30,000	1,500 0	1,00,000	1,05,000	2,512 8
30,000	31,000	1,530 0	1,05,000	1,10,000	2,550 0
31,000	32,000	1,560 0	1,10,000	1,15,000	2,587 8
32,000	33,000	1,590 0	1,15,000	1,20,000	2,625 0
33,000	34,000	1,620 0	1,20,000	1,25,000	2,662 8
34,000	35,000	1,650 0	1,25,000	1,30,000	2,700 0
35,000	36,000	1,680 0	1,30,000	1,35,000	2,737 8
36,000	37,000	1,710 0	1,35,000	1,40,000	2,775 0
37,000	38,000	1,740 0	1,40,000	1,45,000	2,812 8
38,000	39,000	1,770 0	1,45,000	1,50,000	2,850 0
39,000	40,000	1,800 0	1,50,000	1,55,000	2,887 8
40,000	41,000	1,830 0	1,55,000	1,60,000	2,925 0
41,000	42,000	1,860 0	1,60,000	1,65,000	2,962 8
42,000	43,000	1,890 0	1,65,000	1,70,000	3,000 0
43,000	44,000	1,920 0	1,70,000	1,75,000	3,037 8
44,000	45,000	1,950 0	1,75,000	1,80,000	3,075 0
45,000	46,000	1,980 0	1,80,000	1,85,000	3,112 8
46,000	47,000	2,010 0	1,85,000	1,90,000	3,150 0
47,000	48,000	2,040 0	1,90,000	1,95,000	3,187 8
48,000	49,000	2,070 0	1,95,000	2,00,000	3,225 0
49,000	50,000	2,100 0	2,00,000	2,05,000	3,262 8

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum fee of ten thousand rupees, for example—

Rs.	Rs.	A.	Rs.	Rs.	A.	Rs.	As.	A.
3,00,000	4,012	8	6,00,000	6,262	8	9,00,000	8,512	8
4,00,000	4,762	8	7,00,000	7,012	8	10,00,000	9,262	8
5,00,000	5,512	8	8,00,000	7,762	8	11,00,000	10,000	0



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- Governor-General of India, powers of, 47.
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- Grey, Rt. Hon. Sir E. (Viscount), Secretary of State for Foreign Affairs (1906-16), 855, 874, 877 n. 2.
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4. The amendments set forth in sections 2 and 3 shall be deemed to have been made with effect from the commencement of the Bengal Court-fees (Amendment) Act, 1922.

## BENGAL ACT XI OF 1935.

### THE COURT-FEES (BENGAL SECOND AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE 16TH MAY, 1935.]

*An Act further to amend the Court-Fees Act, 1870.*

WHEREAS it is expedient to amend the Court-Fees Act, 1870, in its application to Bengal, in the manner hereinafter appearing ;

AND WHEREAS the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

Short title, extent  
commencement and  
duration.

1. (1) This Act may be called the Court-fees (Bengal Second Amendment) Act, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint.

(4) Clauses (a) and (b) of section 4 and sub-section (2) of section 5 shall remain in force for three years only and thereafter the Court-fees Act, 1870 shall have force as if it had not been amended by the said clauses and sub-section.

2. The Court-fees Act, 1870, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

Amendment of Schedule I, Article 8 of Act VII of 1870.

3. In Article 8 of the first schedule to the said Act, for the figures "1879" in the first column the figures "1899" shall be substituted.

Amendment of Schedule I, Article 11.

4. In Article 11 of the first schedule to the said Act,—

(a) after the words "in excess of a lakh of rupees" in the second column, the words "up to two lakhs and fifty thousand rupees" shall be inserted ;

- 913, 926 n. 1, 995 n. 1, 1013, 1016, 1053, 1060, 1148, 1166, 1221, 1223, 1224, 1232, 1235, 1251; exaggerated view of, as to effect of Imperial Conference of 1926, xix.
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- High Commissioner for the Western Pacific, office of, created to meet Australasian wishes, 868.
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- High Commissioners for the United Kingdom, proposal to appoint to Oversea Dominions (desired by and decided on for Canada especially), discussed at Imperial Conference of 1926, xi, 1225, 1226, 1235.
- High Court of the Commonwealth of Australia, 661-70; interpretation of the constitution by, 631-61.
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- Hincks, Hon. Sir F., K.C.M.G., C.B., Prime Minister of Canada (1851-4), 586.
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- History of the Peace Conference of Paris*, author's contribution to, on Dominions (Vol. VI, chap. iv), referred to, xxiv, 880 n. 2.
- Hobart Conference on federation, 1895, 602.
- Hodges, Hon. H. E. A., Judge of the Supreme Court of Victoria, represents Australia at the Conference of 1901 on Judicial Appeals, 1100.
- Hofmeyr, Hon. J. H., Cape of Good Hope politician, author of suggestion of tax on foreign imports for purposes of Imperial defence, 708, 1013, 1176.
- Holder, Hon. Sir F., K.C.M.G., Premier of South Australia (1890-1901), later Speaker of the Commonwealth House of Representatives, 163.
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- Holland, Sir H. T., Lord Knutsford, Secretary of State for the Colonies (1887-92), views on responsible government in Western Australia, 26, 27; in Natal, 31-3, 59; on appointment of Governors, 68; referred to, 114, 153, 160, 161, 172, 456, 955, 1114.
- Holman, Hon. W. A., Premier of New South Wales, political activities of,

securities specified in the certificate and of any debts or securities to which the certificate has been extended under section 376 of the Act exceeds one thousand rupees.

gate amount or value as consists of the amount or value of debts or securities so specified, the fee hereinbefore provided in that behalf in this article  
and

three per centum on such portion of the first ten thousand rupees,

four and a half per centum on such portion of the next forty thousand rupees.

six per centum on such portion of the next fifty thousand rupees, and

seven and a half per centum on such portion of the remainder of such aggregate amount or value as consists of the amount or value of debts or securities to which the certificate has been extended.

*Note.*—(1) The amount of a debt is its amount, including interest, on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security or for both purposes, the value of the security is its

- n. 1; peace treaty with, 881; *see also* Austria.
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- Immigration Act*, 1919, Canada, 468.
- Immigration Act*, Commonwealth of Australia, 653.
- Immigration Act*, 1925, Commonwealth of Australia, 649, 814.
- Immigration of colonial races, Part V, chap. iv, and *see* Table of Contents.
- Immigration Restriction Act*, 1901, Australia, 348, 814.
- Immigrants Restriction Act*, 1907, Transvaal, anti-Asiatic provisions of, allowed by Lord Elgin, 828.
- Immigration Restriction Amendment Act*, 1920, New Zealand, 811, 818, 819.
- Immunity from jurisdiction of State-owned ships when trading, removal of, approved in 1923, 103, 1216.
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- Immunity of Judges, from judicial proceedings, *see* Judicial immunity.
- Imperial Acts, when binding on Colonial legislatures, 342-8; duties of Governors under, to be exercised normally with ministerial advice, 221-4.
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- Imperial Conference, constitution of, 1179, 1180, 1182, 1203; *see also* Colonial Conference.
- Imperial Conference, 1909, *see* Conference on Naval and Military Defence.
- Imperial Conference, 1911, 849, 873-7, 933, 948, 1008, 1009, 1042, 1101.
- Imperial Conference, 1921, x, 815, 817, 822, 834, 1201-7.
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- Imperial Conference Secretariat, as conceived by Mr. Deakin, 1219.
- Imperial control in matters of administration, 745-8.
- Imperial control in treaty matters, 840-7, 893-918, 1233, App. F.
- Imperial control of Dominion legislation, mode of exercise of, 748-60.
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## BENGAL ACT VII OF 1935.

## THE COURT-FEES (BENGAL AMENDMENT) ACT, 1935.

[PUBLISHED IN THE CALCUTTA GAZETTE OF THE  
16TH MAY, 1935.]

*An Act further to amend the Court-fees Act, 1870.*

WHEREAS it is expedient to revise the law relating to Court-fees in Bengal by amendment of the Court-fees Act, 1870, in its application to Bengal, in the manner hereinafter appearing;

AND WHEREAS the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80-A of the Government of India Act to the passing of this Act;

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Court-fees (Bengal Amendment) Act, 1935.

(2) It extends to the whole of Bengal.

(3) It shall come into force in whole or in part on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint and for this purpose different dates may be appointed for different provisions of this Act.

2. The Court-fees Act, 1870, hereinafter, referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

Substitution of new section for section 2 of Act VII of 1870.

3. For section 2 of the said Act the following section shall be substituted, namely :—

Definitions.

“ 2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) ‘appeal’ includes a cross-objection;
- (2) ‘Chief Controlling Revenue authority’ means the Board of Revenue;
- (3) ‘Collector’ includes any officer not below the rank of sub-deputy collector appointed by the Collector to perform the functions of a Collector under this Act;
- (4) ‘suit’ includes an appeal from a decree except in section 8-A.”

4. In Chapter II of the said Act, for the heading “ Fees in the High Courts and in the Courts of Small Causes at the Presidency Towns ” the heading “ Fees payable in Courts and in Public Offices ” shall be substituted.

Amendment of heading of Chapter II.

- cured by the Irish Free State constitution, 1076; *see also* Judicial Immunity.
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- India, British, constitution, 44-9; future prospects, 1167, 1168; relation of, to League of Nations, 888, 889, 890, 908, 941; representation on Judicial Committee, 1097, 1098; rule as to divorce of persons not there domiciled, 962, 963; share of reparations, 1205; views on air service, 1244; terminates Indian immigration into Natal, 830; views of author as to home government of, xxiv; as to impossibility of fixing by treaty aid in British wars to be rendered by, xvi.
- Indian and Colonial Divorce Jurisdiction Act*, 1926, Imperial, 965 n. 4.
- Indian bishoprics, created by statute (see now *Indian Church Measure*, 1927, respecting Church of England and Church of India), 1128.
- Indian Civil Service, Indianization of, 49.
- Indian divorces, validated, 962, 965 n. 4.
- Indian judges, on Judicial Committee (Judicial Committee Bill, 1927), 1097, 1098 n. 1.
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- Indianization of Indian Army (cf. Sir William Birdwood, *Indian Legislative Assembly*, 25 August 1927) and Civil Service, 49.
- Indians, British, *see* British Indians.
- Industrial Arbitration Act*, 1894, New Zealand, 458.
- Industrial Arbitration Act*, 1916, Queensland, 351.
- Industrial Disputes Act*, 1908, New South Wales, 641.
- Industrial Disputes Investigation Act*, 1907, Canada, 545, 547.
- Industrial Disputes Investigation Act*, 1925, Canada, 551.
- Industrial Workers of the World, a revolutionary association, 252, 985, 1164.
- Influx of criminals, Australian legislation as to, 626, 629.
- Information as to governmental proceedings to be supplied to Governor-General (cf. Edward VII's difficulties with his ministries as described by Sir Sidney Lee), 1226.
- Informers, remission of penalties due to, by Governor, requires legislative sanction, as in United Kingdom, 1120.
- Initiative, in Dominions, 303-5; facultative, in Irish Free State Constitution, proposal in 1927 to abolish, 1253.
- Initiative and referendum, proposal in New South Wales, 455.
- Inquiries into shipwrecks, Dominion powers as to, 1085.
- Insolvency, federal and provincial legislative power in Canada as to, 552; Commonwealth legislative power as to, 626.
- Inspection laws, powers of Australian States to make, 624, 625.
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- Inspector-General of the Oversea Forces, held in 1911-15 in conjunction with Commandership-in-Chief, Mediterranean, 977.
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- Instability of representative government in the colonies, 11-13.
- Instructions, royal, to Governors (for texts in full *see* ed. 1, Appendix; for older forms, cf. Greene, *Provincial Governor*, App. A.), 109-117, 209.
- Insurance, limited Commonwealth power of legislation as to, 626.
- Insurance Act* (1 Edw. VII, c. 21), Ontario, not disallowed, 566.
- Interchange of ministerial duties, 237 n. 2.
- Interchange of regiments, proposal for, 970, 971.
- Interchange of ships of the Dominion and Imperial navies, 1016, 1017.
- Intercolonial Council, South Africa, 705, 706.
- Intercolonial preference in Australia, Part V, chap. vi, § 1, 1177, 1178.
- Intercolonial Railway in Canada, 506, 507, 578; in Commonwealth of Australia, 684, 685.
- Inter-Imperial alliances, objections to theory of, xiv-xvi.
- Inter-Imperial relations, not created by treaties concluded under aegis of League of Nations, Part V, chap. v,

such profits, according to the market-value of the land building or garden ;

*Explanation.*—In this paragraph “building” includes a house, outhouse, stable, privy, urinal, shed, hut wall and any other such structure, whether of masonry bricks, wood, mud, metal or any other material whatsoever ;” ;

(4) for paragraph vi the following paragraph shall be substituted namely :—

“vi. In suits to enforce a right of pre-emption—according to the market-value of the land, building or garden in respect of which the right is claimed :

*Explanation.*—In this paragraph ‘building’ has the same meaning as in paragraph v ;” ;

(5) after paragraph vi the following paragraph shall be inserted, namely :—

“vi-A. In suits for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property—

if the plaintiff has been excluded from possession of the property of which he claims to be a co-parcener or co-owner, according to the market-value of the share in respect of which the suit is instituted :”.

Insertion of new sections 8A to 8F.

8. After section 8 of the said Act the following sections shall be inserted, namely :—

“8A. In every suit in which an *ad valorem* court-fee is payable under this Act on the plaint, the plaintiff shall file with the plaint a statement of particulars of the subject-matter of the suit and his own valuation thereof unless such particulars and the valuation are contained in the plaint. The statement shall be in such form and shall contain such

Statement of particulars of subject-matter of suits and plaintiff's valuation thereof.

particulars as may be prescribed by the Local Government by notification in the *Calcutta Gazette*. In every such suit the plaintiff shall also, if the Court so directs, file a duplicate copy of the plaint and of the said statement.

8B. (1) In every suit in which a court-fee is payable under this

Procedure where insufficient court-fee is filed on plaint or memorandum of appeal.

Act on the plaint or memorandum of appeal the Court shall, as soon as may be after the registration of the plaint or memoranadum of appeal, and in every case before proceeding to deliver judgment, record a finding

whether a sufficient court-fee has been paid.



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- Irish Free State Constitution Act*, 1922, Imperial, 884 n. 1, 1032; constitution, s. 28, xxiii; s. 46, 975 n. 1; s. 49, 998, 999; s. 53, xxiii; s. 66, xxii, 1089; minor amendments of, 1253.
- Irish Free State Minister at Washington, restrictions on, 894, 895, 909 n. 2, 1233, 1252, 1253.
- Irish Free State treaty of 1921 (amended in 1924 and 1925), confirmed, 42, 843, 844, 847 n. 6, 884, 885, 891, 892; s. 8, 997, 998; is silent on question of aid in British wars, xv; lays down principle of Canadian usage as dominating relations of the Irish Free State to the United Kingdom, xxii; provisions of, as to oath, 1253, 1254.
- Irish rebellion, martial law in, 205-7.
- Irish Republican Army, 997.
- Irish Volunteers, 997.
- Irvine, Hon. Sir William, K.C.M.G., formerly Premier of Victoria, now Chief Justice, opposes policy of Mr. Hughes on conscription, 141, 985.
- Isaacs, Hon. I. A., Justice of the High Court of Australia, views of, 327, 608, 633, 639, 641, 644, 648, 650, 668.
- Islington, Lord, G.C.M.G., P.C., Governor of New Zealand (1910-12), refuses to dismiss ministers in 1912, 136.
- Italian debacle in 1917, effect of, in Australia, 985.
- Italian immigration into Australia, 815, 838 n. 1.
- Italian reparation payments, convention regarding, signed for Dominions, 881.
- Italy, immigration into Australia, 838 n. 1; treaty of 1883 (binds the Commonwealth save as regards South Australia; the Union save as regards the Cape; New Zealand, Newfoundland, Irish Free State), 848, 849; treaty of 1923 with Canada, 855, 857, 901; defeat of armies of, in 1917, 983; desire of Malta for union with, 50; pre-Fascist feebleness of, 903.
- Jagger, Hon. J. W., Union of South Africa, 835.
- Jamaica, bishopric of, statutory powers of, 1128; pays half damages in respect of detention of the *Florence*, 1083 n. 1; surrender of constitution, 12; Lord Elgin as Governor of, 17.
- Jameson, Rt. Hon. Sir L. S., Bart., Prime Minister of the Cape of Good Hope, 258, 1100; shares in incursion into the Transvaal, 36; resigns office in the Cape of Good Hope, 168.
- Japan, alliance with, under treaty of 1905, and general relations, 816, 819, 820, 822, 823, 835, 841, 846, 859, 874, 922, 1201, 1202; commercial treaty of 1894 with, 816, 845, 846, 893 n. 3, 924, 1179; commercial treaty of 1911 with, 849, 890; democracy in, 47; mandate questions, 1050, 1051, 1054; relations with Australia, 1151.
- Japanese, naturalized or British subjects by birth, denied franchise in British Columbia (therefore also for Canada), 395; in Commonwealth of Australia, 397; in Queensland, 399; in Western Australia, 400; in South Africa, 401, 402.
- Japanese immigration into Australasia, 813-19; into Canada, 819-24.
- Jellicoe, Admiral of the Fleet, Viscount, O.M., G.C.B., G.C.V.O., Governor-General of New Zealand (1920-5), representative of New Zealand at the Geneva Conference on naval disarmament in 1927, reports on naval defence of the Dominions, 1013.
- Jenkins, E., advocates federation, 1158.
- Jenkins, Hon. J. G., Prime Minister of South Australia (1901-5), Agent-General of South Australia (1905-8), 286; acknowledgement of obligation to, xxv.
- Jenkyns, Sir Henry, K.C.B., views on authority of Governor, 84, 85; on powers of Parliament, 310.
- Jensen, Hon. J. A., removal from office in Australia, 235, 236.
- Jervis Bay, Naval College at, 683, 1009.
- Jervois, Lieut.-Gen. Sir W. D., G.C.M.G., reports on Australian defences, 601, 970.
- Jesuits' Estates Act*, 1888 (51 & 52 Vict. c. 13), Quebec, 343 n. 5, 563 n. 1, 1136, 1137.
- Jews, treated as Protestants in Quebec, 1141.
- Johnson (Johannsen), Mr., attempted deportation of, from the Commonwealth in 1925, 649.

(b) compelling the production of documents or material objects and

(c) issuing commissions for the examination of witnesses.

(2) An inquiry or investigation referred to in sub section (1) shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code.

8F. If in the result of an inquiry under section 8C the Court finds that the subject-matter of the suit has been undervalued the Court may order the party responsible for the undervaluation to pay all or any part of the costs of the inquiry.

Costs of inquiry as to valuation and refund of excess fee.

If in the result of such inquiry the Court finds that the subject-matter of the suit has not been undervalued the Court may, in its discretion, order that all or any part of such costs shall be paid by Government or by any party to the suit at whose instance the inquiry has been undertaken, and if any amount exceeding the proper amount of fee has been paid shall refund the excess amount so paid."

Repeal of sections 9 and 10.

9. Sections 9 and 10 of the said Act are hereby repealed.

Substitution of new section for section 11.

10. For section 11 of the said Act the following section shall be substituted, namely :—

"11. Where in any suit for mesne profits or for land and mesne profits or for an account, the fee which would have been payable if the suit had comprised the whole of the relief to which the Court finds the plaintiff to be entitled exceeds the fee actually paid, the Court shall require the plaintiff to pay an additional fee equal to the amount of the excess, and if such additional fee is not paid within such time as the Court may fix, the suit, or if a decree has previously been passed therein, so much of the claim as has not been so decreed, shall be dismissed :

Procedure in suits for mesne profits or accounts when amount found due exceeds amount claimed.

Provided that, where the additional fee is payable in respect of a portion of the claim which can be relinquished, that portion only shall be dismissed."

11. In paragraph ii of section 12 of the said Act, for the words "and figures" and the provisions of section 10 paragraph ii, shall apply" the following shall be substituted, namely :—

Amendment of section 12.

"and thereafter :—

(a) if the party required to pay is the appellant or petitioner, the provisions of sub-sections (2) and (3) of section 8B shall so far as may be, apply ;

- (1874-5), is refused a dissolution, 160, 513 n. 1.
- Kermadec Islands, annexed to New Zealand in 1887, 355.
- Kerr, Admiral Mark, C.B., M.V.O., views of, on battleships, 1015.
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- Khartoum, New South Wales offer after fall of (Sir J. Macdonald (12 May 1885) deprecated offering to send the Canadian permanent force as against Sir C. Tupper's suggestion; *Corr.*, pp. 337 f.), 978.
- Kidston, Hon. W., Premier of Queensland (1906-11), 120, 129, 165, 184, 278, 306, 460, 461.
- Kimberley, Earl of, Secretary of State for the Colonies (1870-4, 1880-2), views on responsible government in the Cape of Good Hope, 29; in Natal, 30, 31; referred to, 842, 930, 1111.
- King, H.M. the, can only be advised by Imperial Ministers through whose hands Dominion recommendations must pass, xii-xiv, 909, 1202, 1228, 1229; could exercise sovereignty personally in South Africa, 710; perhaps in Canada but not in the Commonwealth, 621; grant of dissolution by, 154-6; name of, systematically ignored in official proceedings in the Irish Free State, 1165; power of, to dismiss ministers, 123, 154; should be fully informed of ministerial decisions, 1226; style of, changed in 1927, 1225; *see also* Crown in United Kingdom and Unity of the Crown.
- King, *see* Mackenzie King.
- King George's Sound, abortive proposal to fortify, discussed at Colonial Conference of 1887, 1176.
- Kingdom of Canada, style desired, 507.
- King's Counsel, appointment of, 88, 89; Canadian powers as to (*Corr. of Sir John Macdonald*, 23 Dec. 1872, p. 194), 532, 533.
- King's Own Malta Regiment, 996.
- Kingston, Rt. Hon. Charles, Premier of South Australia (1893-9), 612; is refused a dissolution by Lord Tennyson, 163.
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- Kitchener, Field-Marshal Viscount, visit to Australia and New Zealand, 1071.
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- Knighthood, how conferred (Prince of Wales in 1860 authorized to confer in Canada, and similarly on later occasions, e.g. Duke of York in 1927), 87; to whom appropriate (*cf. Corr. of Sir John Macdonald*, pp. 335-7), 1023.
- Knighthoods awarded for Colonial or Dominion services, 1023.
- Kœgas murderers, escape punishment through Mr. Upington's incompetence, 797 n. 1.
- Komagata Maru, voyage of the, to Canada with Indian revolutionaries, 821.
- Korumba, Australian oil-tanker, 1011.
- Kruger, Paul, President of the South African Republic, ultimatum in 1899 of, 978.
- Kulsan Bibi, case of, in Union of South Africa, 830, 831.
- Kuwait Order in Council, 1925 (No. 972), applies to Dominion British subjects, 1039 n. 5.
- Labilliere, P. F., advocates federation of Empire, 1158.
- Labouchere, Rt. Hon. H., later Lord Taunton, Secretary of State for the Colonies (1855-8), gives pledge to Newfoundland as to treaty obligation (Prowse, *Newfoundland*, pp. 474 f.), 22.
- Labour clauses of the treaty of peace, 1919, 880.
- Labour Conference in Australia, opposes effective participation in the war, vii, 986, 987.
- Labour Conventions under League of Nations, Canadian position as to, 579-81; Australian position as to, 620, 621.
- Labour Exchanges, Dominion reluctance to make use of British in 1911, 1191.
- Labour ministries, in Australia, selected by caucus, 232, 233.
- Labour ministry in United Kingdom in 1924, fond of uniforms, 1026; insists on knighting Sir J. O'Grady, 1023; recognizes Russia without consulting Dominions, 906, 1218; rejects project of Imperial Economic Committee, 1218; suggests holding of a Conference on Constitutional Relations, 1218, 1219.
- Labour Organization, League of Nations, 620, 621, 889, 890; Dominion position in respect of Governing Body, 880.

Substitution of new section for section 35.

15. For section 35 of the said Act, the following section shall be substituted, namely :—

"35. (1) The Local Government may, from time to time subject to such conditions or restrictions as it may think fit to impose, by notification in the *Calcutta Gazette*, suspend the payment of or reduce or remit, in the whole of Bengal or in any part thereof, all or any of the fees mentioned in the first and second schedules to this Act annexed and may in like manner cancel or vary such order.

(2) The Local Government may, from time to time by rules, prescribe the manner, in which any fee the payment of which is suspended under sub-section (1) may be realised and for this purpose direct that such fee may be recovered as a public demand."

Amendment of Schedule II.

16. In Schedule II to the said Act,—

(1) in Article 17, after entry v the following entry shall be inserted, namely :—

"vA. for partition and separate possession of a share of joint family property or of joint property, or to enforce a right to a share in any property on the ground that it is joint family property or joint property if the plaintiff is in possession of the property of which he claims to be a co-parcener or co-owner; . . . Fifteen rupees."

(2) after Article 18 the following article shall be inserted, namely :—

"18A. Application under paragraph 20 of the Second Schedule to the Civil Procedure Code, 1908, to file an arbitration award, and memorandum of appeal from a decree passed under paragraph 21 of the said Schedule. . . . Fifteen rupees."

(3) after Article 21 the following article shall be inserted, namely :—

"22. Petition."

(a) questioning the election of any person as a Municipal Commissioner, when presented to a District Judge under section 36 of the Bengal Municipal Act, 1932;

(b) questioning the election of any person as a member of a District Board or Local Board when presented to any authority appointed under clause (a) of section 138 of the Bengal Local Self-Government Act of 1885 to decide disputes relating to such elections.

. . . Fifteen rupees."

- Latham, Hon. J. G., C.M.G., K.C., Attorney-General of the Commonwealth in 1926, 891 n. 1, 1250.
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- Laurier, Rt. Hon. Sir Wilfrid, Prime Minister of Canada (1896-1911) and then leader of the Opposition, vii, 129, 131, 135, 186, 216, 234, 238, 246, 266, 280, 306 n. 1, 309 n. 1, 314 n. 1, 395, 464, 465, 538, 540, 707, 855, 858 n. 3, 861, 865, 872, 873, 875, 877 n. 1, 893, 949, 979, 981, 999, 1000, 1008, 1010, 1013, 1019, 1023, 1042, 1100, 1151, 1162, 1185, 1187, 1189, 1190, 1193.
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- Laverigne, A., opposes Canadian naval policy, 1007.
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- Law, Rt. Hon. A. Bonar, M.P., Prime Minister of the United Kingdom (1922-3), views in 1920 on secession of Dominions, xii, 1166.
- Law officers of the Crown, opinions of, on ecclesiastical jurisdiction of the Crown, 1126, 1130; on extra-territorial power of colonial legislation, 321; on naval defence legislation, 1003; on the relations of the Houses of Parliament as to money bills, 447; on the removal of colonial judges, 1072; on the repugnancy of colonial laws, 339, 340.
- Lawley, Hon. Sir Arthur, G.C.M.G., Lieutenant-Governor of the Transvaal, anti-Indian policy proposed by, 826.
- Laws Repeal and Adopting Ordinance*, 1921, New Guinea, 1055.
- Leacock, Professor S., views of, on Colonial status, 1171.
- League of Nations and Dominion international status, 883-93.
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- Leave of civil servants, Imperial legislation affecting, no longer applies to Dominions, 1037.
- Lee, Hon. Sir W., K.C.M.G., is refused a dissolution in Tasmania in 1923, 171 n. 1.
- Leeward Islands, constitutions of, 12.
- Lefroy, A. H. F., K.C., editor of the *Canadian Law Times*, vii, 1162 n. 1.
- Legal basis of responsible government, 51-63.
- Legal liability of Governor, vii, viii, 95-9.
- Legal position of the Church of England in the Dominions, 1125-32; of other Churches, 1132-41.
- Legal tender, limitation of Australian State powers as to, by Constitution, 625.
- Legality, spirit of, in Dominion, 518.
- Legislation, as of Imperial or local interest, attempt to define, 23, 24.
- Legislative Assembly, style of Lower House, 392; for the various Assemblies, *see* Part III, chap. vi; of India, 47.
- Legislative Council, style of Upper House, 392; *see* for the constitution and relation to the Lower Houses of the Councils, Part III, chap. vii and viii.
- Legislative powers of the Commonwealth and States, 623-30; relations of the powers, 631-61.
- Legislative powers of the Dominion and provinces of Canada, 517-59.
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- Legislature, style of Canadian provincial legislative bodies, 392.
- Legislature Act*, 1908, New Zealand, 59.
- Legislature distinct from Government, may be object of libel, 375.
- Legitimation of children (*Legitimacy Act*, 1926), 965.
- Lemieux, Hon. Rodolphe, K.C., Minister (1906-11), and later Speaker in Canada (1922- ), 820, 1013.
- Lennon, Hon. William, political supporter of Labour party, appointed Lieutenant-Governor of Queensland, swamps Legislative Council, 134, 135, 142, 143, 461, 462.
- Lepine, Ambroise, commutation of sen-

8. For the "proper fees" set out in Schedule I of the principal Act, for Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

9. For the entries above the proviso in the second column and for the entries in the third column, in Article 11 of Schedule I of the principal Act, the following shall be substituted, namely:—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees

Two per centum.

and

When such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees.

Three per centum.

and

When such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees.

Four per centum

and

When such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.

Five per centum.

10. For the entry in the second column of Article 12 of Schedule I of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees.

Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum.

and

when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees;

Three per centum and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four-and-a-half per centum.

and

when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees;

Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum.

- Liquor traffic, Canadian legislative powers as to, 526-30; Convention of 1919 as to, signed by Dominions, 881.
- Lithuania, treaty of 1922 with, 850 n. 2; relations with Poland of, 1205; *see also* Extradition Treaties.
- Little, Hon. J. I., J. of Newfoundland, views of, on territorial limitations of legislation, 324.
- Lloyd, Rt. Hon. Sir W., Prime Minister of Newfoundland, 134, 249, 273.
- Lloyd, Lord, British High Commissioner in Egypt, exposition of Egyptian position by, at Imperial Conference of 1926, 1223.
- Lloyd George, Rt. Hon. David, Prime Minister of the United Kingdom (1916-22); abortive effort to solve Irish question in 1917, 39; later success, 40-2; referred to, 234, 880, 1022, 1196, 1197 n. 1, 1202, 1205, 1217.
- Loadlines, Canadian legislation as to, 944; Commonwealth legislation as to, 949.
- Loan of British Government for settlement in Australia, 701.
- Loans, raising of, in Australia, 675, 676; App. D.
- Loans, Dominion, admitted as trustee securities, disallowance of Acts impairing security of (cf. Quebec Act 51 & 52 Vict. c. 9, in effect compelling conversion of 5 per cent. loan to 4 per cent., amendment of which by 52 Vict. c. 2 was forced on legislature by Dominion Government; *Corr. of Sir John Macdonald*, pp. 417 ff.), 769, 770.
- Loans Fund, in Commonwealth of Australia, 364.
- Local legislation, Canadian provincial powers as to, 554.
- Local limitation of Canadian provincial legislation, 557; as to companies, 548.
- Local matters, relaxation of Imperial control in, 776-80.
- Locarno pact of 1925, relation of Dominions to, xiv, 843, 907, 917, 1151, 1220, 1221, 1222, 1232.
- Lodge, Senator, uses Kipling in opposing British interests, 854.
- Logan, Colonel, leads New Zealand expedition to Samoa, 1012.
- London Reparations Conference, unsatisfactory representation of Dominions at, 906.
- Londonderry, Marquis of, Minister of Education in Northern Ireland, errors in educational policy of, 1140.
- Long, Rt. Hon. Walter, M.P. (later Lord Long), supports action of Natal government in 1906, 215.
- Loranger, Mr. Justice, of Quebec, Canada, proposed removal of, 1068.
- Lord Chancellor, does not exercise power to make regulations under *Foreign Tribunals Evidence Act*, 1856, as regards Dominion Courts, 1086 n. 5.
- Lord Lieutenant of Ireland, immune from suit, 83 n. 2, 96.
- Lord Mayor, style only conferred by King, *see* Honours.
- Loreburn, Lord, opposes idea of one Imperial Court of Appeal, 1101.
- Loughlin, Hon. P. F., Secretary for Lands, New South Wales, rival of Mr. Lang, retires from office, 281 n. 4.
- Louisiana, disappearance of French privileges in, 6.
- Low standard of Australian political morality, 141.
- Lowe, Robert, advocates separation of Canada, 1156.
- Lower House, decides fate of ministry, 268, 269; for composition, &c., *see* Part III, chap. v and vi.
- Lucas, Sir Charles P., K.C.B., K.C.M.G., author of *The Empire at War*, *Lord Durham's Report*, &c., acknowledgement of indebtedness to, xxvi.
- Luisa Calderon, case of torture of, in Trinidad, 97.
- Lumber dues in New Brunswick, 577.
- Lutwyche, Mr. Justice, Queensland, 374.
- Luxembourg, Canadian commercial convention of 1924 with, 901.
- Lyndhurst, Lord, fails to form government in 1832, 155.
- Lyne, Hon. Sir W. J., K.C.M.G., Commonwealth Minister for Home Affairs (1901-3), Trade and Customs (1903-4, 1905-7), Treasurer (1907-8), becomes Premier of New South Wales in 1899, 163; referred to, 604, 674.
- Lyons, Hon. J., Ontario Minister of Lands, 365 n. 1.
- Lytelton, Rt. Hon. Alfred, Secretary of State for the Colonies (1903-5), 714, 826, 870, 1181.
- Lytton, Rt. Hon. Sir Edward Bulwer- (later Lord Lytton, G.C.M.G.), Secretary of State for the Colonies (1858-9), views on Prince Edward Island land bill, 772.
- MacBride, Hon. Sir R., Premier (1903-15), and later Agent-General of British Columbia, 234 n. 1, 249, 283, 576, 750.

## SCHEDULE B.

TABLE OF RATES OF *Ad valorem* FEES LEVIABLE ON THE  
INSTITUTION OF SUITS.

[See section 11 of the Bihar and Orissa Court-fees  
(Amendment) Act, 1922].

When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the sub- ject-matter exceeds—	But does not exceed—	Proper fee
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 6	220	230	20 8
5	10	0 12	230	240	21 8
10	15	1 2	240	250	22 8
15	20	1 8	250	260	23 8
20	25	1 14	260	270	24 8
25	30	2 4	270	280	25 8
30	35	2 10	280	290	26 8
35	40	3 0	290	300	27 8
40	45	3 6	300	310	28 8
45	50	3 12	310	320	29 8
50	55	4 2	320	330	30 8
55	60	4 8	330	340	31 8
60	65	4 14	340	350	32 8
65	70	5 4	350	360	33 8
70	75	5 10	360	370	34 8
75	80	6 0	370	380	35 8
80	85	6 6	380	390	36 8
85	90	6 12	390	400	37 8
90	95	7 2	400	410	38 8
95	100	7 8	410	420	39 8
100	110	8 8	420	430	40 8
110	120	9 8	430	440	41 8
120	130	10 8	440	450	42 8
130	140	11 8	450	460	43 8
140	150	12 8	460	470	44 8
150	160	13 8	470	480	45 8
160	170	14 8	480	490	46 8
170	180	15 8	490	500	47 8
180	190	16 8	500	510	48 8
190	200	17 8	510	520	49 8
200	210	18 8	520	530	50 8
210	220	19 8	530	540	51 8



- 62; letters patent, 50; Executive Council, 107, 110; summons, prorogation, and dissolution of Parliament, 113; Executive Council and Cabinet, 226, 227; and Parliament, 228; Cabinet, 245; political parties (Sir G. Strickland becomes Premier in 1927), 258; no High Commissioner, 282 n. 7; Civil Service, 296; legislative powers of the Parliament, 301; limitations of power, 315, 316; amendment of the Constitution, 357, 358; civil list, 366; privileges, 368; language, 378; Speaker, 379; Governor's powers, 384; franchise for lower house, 403; members of Parliament, 410; duration, 412; payment, 413; proportional representation, 419; disputed elections, 424; Upper Chamber, 443, 444; reservation of Bills, 753, 754; disallowance, 759; special rules, 761; defence, 906; judicial tenure, 1073; appeals, 1084 n. 3; prerogative of mercy, 1119; religion, 1130; not entitled to style or status of a Dominion, xx; desire for union with Italy (defeat of government on this among other issues by Constitutionalists and Labour (15 and 3 seats to Government 13), in August 1927 General Election), 50.
- Malta Regiment Ordinance*, 1923, 996.
- Maltese nobility, 1024 n. 2.
- Mandamus* does not lie to Governor, 99, 100; restriction of grant of, in Australia, 621.
- Mandates, Part V, chap. xiv; 882, 1210.
- Mandates Commission, League of Nations, 1051, 1052, 1064.
- Manitoba, province of the Dominion of Canada since 1870: representative government, 8; responsible government, 21; legal basis of responsible government, 52; deputy Lieutenant-Governor, 74; provincial seal, 90; Executive Council, 107; financial irregularities, 188; Executive Council and Cabinet, 226, 227; Cabinet, 240; political parties (no change in 1927), 249; Agent-General, 283; Civil Service, 291 n. 1; legislative powers, 302 n. 2, 321; referendum, 303, 304, 306; privileges, 369, 370; language, 376; time limit for speeches, 387; now unicameral, 391, 472; Legislative Assembly, 394, 395, 398; membership, 405; duration, 411; payment, 413; preferential voting, 417, 418; redistribution, 423; disputed elections, 424; entry into federation, 508; education questions, 537, 538; disallowance of provincial Acts, 560-9; land rights, 581; new territories, 584; boundary questions, 585, 586; lands, 772, 773; Indians, 784; judicial tenure, 1067; appeal to Privy Council (Order in Council, 28 November 1910), 1091.
- Manitoba-Ontario boundary case, 1106.
- Mann, E. A., Nationalist member of Commonwealth Parliament, points out effect of policy of encouraging secondary industries at expense of United Kingdom trade, 936 n. 3.
- Manning, Hon. Sir William, New South Wales, his views on duties of Governor under Act of 1867 as to Militia, 973 n. 1.
- Maoris, position of, 788-91; qualified to vote in New Zealand, 400; in Commonwealth of Australia, 397; not in Western Australia, 400; services of, in Great War, 988.
- Maple leaf, as Canadian badge, 1031 n. 3.
- Marine Insurance Act*, 1909, Commonwealth of Australia, 629 n. 2.
- Maritime Conventions Act*, 1911, Imperial, 949 n. 1, 950, 951.
- Maritime Conventions Act*, 1914, Canada, 579 n. 2.
- Maritime Court for Ontario, 1080.
- Maritime liens and mortgages, draft Convention on, recommended for acceptance by the Imperial Conference of 1926, 1240.
- Maritime provinces, position of, in Canada, 590, 592, 594 n. 1.
- Marriage, federal and provincial legislative power in Canada as to, 554, 555; Commonwealth legislative power as to, 626.
- Marriage licences, issue of, by Governors (cf. Greene, *Provincial Governor*, pp. 128, 129, 142), 88 n. 1, 111, 113.
- Marriage with deceased wife's sister in its effect on property in England, 1177; with foreigners, 1212.
- Marriage with Foreigners Act*, 1906, Imperial, 1212.
- Marriages, validity of certain, assailed in New South Wales and New Zealand, 1141; validation of, when declared valid in a colony, by Imperial Act of 1865, 1034.
- Marriages of women to foreigners, question of validity of, 1180, 1192, 1212.
- Married women, as civil servants, 292 n. 1; nationality of, 1044, 1046, 1212, 1236.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees.		When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fees.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs.	A.
4,200	4,300	345	0	15,500	16,000	967	8
4,300	4,400	352	8	16,000	16,500	990	0
4,400	4,500	360	0	16,500	17,000	1,012	8
4,500	4,600	367	8	17,000	17,500	1,035	0
4,600	4,700	375	0	17,500	18,000	1,057	8
4,700	4,800	382	8	18,000	18,500	1,080	0
4,800	4,900	390	0	18,500	19,000	1,102	8
4,900	5,000	397	8	19,000	19,500	1,125	0
5,000	5,250	412	8	19,500	20,000	1,147	8
5,250	5,500	427	8	20,000	21,000	1,177	8
5,500	5,750	442	8	21,000	22,000	1,207	8
5,750	6,000	457	8	22,000	23,000	1,237	8
6,000	6,250	472	8	23,000	24,000	1,267	8
6,250	6,500	487	8	24,000	25,000	1,297	8
6,500	6,750	502	8	25,000	26,000	1,327	8
6,750	7,000	517	8	26,000	27,000	1,357	8
7,000	7,250	532	8	27,000	28,000	1,387	8
7,250	7,500	547	8	28,000	29,000	1,417	8
7,500	7,750	562	8	29,000	30,000	1,447	8
7,750	8,000	577	8	30,000	32,000	1,477	8
8,000	8,250	592	8	32,000	34,000	1,507	8
8,250	8,500	607	8	34,000	36,000	1,537	8
8,500	8,750	622	8	36,000	38,000	1,567	8
8,750	9,000	637	8	38,000	40,000	1,597	8
9,000	9,250	652	8	40,000	42,000	1,627	8
9,250	9,500	667	8	42,000	44,000	1,657	8
9,500	9,750	682	8	44,000	46,000	1,687	8
9,750	10,000	697	8	46,000	48,000	1,717	8
10,000	10,500	720	0	48,000	50,000	1,747	8
10,500	11,000	742	8	50,000	55,000	1,785	0
11,000	11,500	765	0	55,000	60,000	1,822	8
11,500	12,000	787	8	60,000	65,000	1,860	0
12,000	12,500	810	0	65,000	70,000	1,897	8
12,500	13,000	832	8	70,000	75,000	1,935	0
13,000	13,500	855	0	75,000	80,000	1,972	8
13,500	14,000	877	8	80,000	85,000	2,010	0
14,000	14,500	900	0	85,000	90,000	2,047	8
14,500	15,000	922	8	90,000	95,000	2,085	0
15,000	15,500	945	0	95,000	1,00,000	2,122	8

- Merchant vessels, seizure of enemy, not permitted to Governor save under delegation, 93.
- Mercier, Hon. Honoré, Premier of Quebec (1857-91), dismissed by Mr. Angers, 248; responsible for *Jesuits' Estates Act*, 1888, of Quebec, 1136, 1137.
- Mercy, prerogative of, Part VI, chap. iv; propriety of abolishing any personal discretion of Governor in regard to, suggested by author in 1915, vii, viii.
- Meredith, Hon. Sir W., leader of Opposition (1890-94), C.J. of Common Pleas (1894-1912), C.J. of Ontario from 1912, advocates cessation of appeal to Privy Council, 1103.
- Merriman, Rt. Hon. John Xavier, South African statesman, 119, 246, 604, 708, 1013; assumes office in Cape of Good Hope in 1908, 168.
- Mesopotamia, Dominion forces serve in, during war, 983, 987.
- Metcalf, Sir Charles, later Lord Metcalfe, Governor-General of Canada (1843-5), 16, 17.
- Mitokology Act*, 1906, Commonwealth of Australia, 626 n. 1.
- Methodist Church in Canada joins in United Church, 1136.
- Mexico, treaty of 1888 with, applicable to Australia (save New South Wales), Newfoundland, Natal, Transvaal, Orange River Colony; permission for separate withdrawal conceded in 1911, 848.
- Migratory Birds Convention Act*, 1917, Canada, 580.
- Military and naval officers, precedence of (cf. Beer, *British Colonial Policy*, 1754-65, pp. 176 f.), 1028.
- Military Board of the Commonwealth of Australia, 992.
- Military College, South Africa, 977.
- Military Courts, constitutional restrictions on jurisdiction of, in Irish Free State, 320; establishment of, by *Public Safety Act*, 1927, 1253, 1254.
- Military Defence, Imperial control as regards, Part V, chap. x, and see Table of Contents.
- Military Demobilization Committee, for Imperial forces, 1199.
- Military honours (for provincial Lieutenant-Governors see *Corr. of Sir John Macdonald*, p. 87), 1026.
- Military Service Act*, 1917, Canada, 982, 983.
- Military units, proposed exchange of, with Dominions, 1179.
- Military Voters Act*, 1917, Canada, 267, 392, 981.
- Militia Act*, Canada, amended in 1904 to place complete control in Canadian Government and to restrict obligation to the defence of Canada only, 980.
- Militia Bill, 1863, Canada, rejection of, causes deep impression in United Kingdom, 506.
- Militia Council, Canada, 970.
- Militia of Canada, 990, 991.
- Mill, J. S., his definition of direct taxation adopted in interpretation of Canadian constitution (see also *Attorney-General for British Columbia v. Canadian Pacific Railway Co.*, 43 T.L.R. 750), 536.
- Mills, Arthur, M.P., mover of resolution of colonial defence on 4 March 1862, 967; views on independence of colonies, 1156.
- Mills, Hon. D., Minister of Justice of Canada (1897-1902), J. of the Supreme Court (1902-3), views of, 468, 469, 566, 893, 957.
- Milner, Lord, Governor of the Transvaal and Orange River Colony, later Secretary of State for the Colonies, weakness in refusing to disallow Queensland confiscatory legislation, 768; wishes to suspend Cape Constitution, 214; referred to, 224, 800, 813, 825, 826, 827, 840, 882; his doctrine of racial superiority fatal to continuance of Empire, 827 n. 1.
- Milroy, S., defeated at by-election in Irish Free State, 259.
- Mineral Resources Bureau, 1200.
- Mines and Works Act*, 1911, Union of South Africa, 499 n. 1, 802, 836.
- Mines and Works Act Amendment Act*, 1926, Union of South Africa, 836.
- Mining Act*, 1904, Western Australia, anti-Asiatic clauses of, 817.
- Mining Regulations Commission, 1924-5, Union of South Africa, 805.
- Minister, office of, in Dominions, Part II, chap. vii.
- Minister of Defence, Commonwealth of Australia, 992.
- Minister of Defence, Union of South Africa, 994, 995.
- Minister of External Affairs, Prime Minister as, in Canada, 925.
- Minister of External Affairs, Commonwealth of Australia, 925.
- Minister of External Affairs, Irish Free State, 925.
- Minister of External Affairs, New Zealand, 925.

## SCHEDULE C.

[See section 12 (4) of the Bihar and Orissa Court-fees (Amendment) Act, 1922]

Proper fees set out in Schedule II of the principal Act.			Proper fees to be substituted.
Article 1	...	One anna ...	Two annas.
		Eight annas ...	Twelve annas.
		One rupee ...	One rupee and eight annas.
		Two rupees ...	Three rupees.
Article 1 A	...	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of Article I of this Schedule.	One rupee in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of Article I of this Schedule.
Article 10	...	Eight annas ...	One rupee
		One rupee ...	Two rupees.
		Two rupees ...	Three rupees.
Article 11	...	Eight annas ...	One rupee.
		Two rupees ...	Four rupees.
Article 12	...	Five rupees ...	Ten rupees.
Article 14	...	Five rupees ...	Ten rupees.
Articles 17, 18 and 19.	...	Ten rupees ...	Fifteen rupees.
Article 20 and 21.	...	Twenty rupees ...	Thirty rupees.

## BOMBAY ACT NO. II of 1932.

## PART III—COURT FEES ACT.

It extends to the whole of the Presidency of Bombay.

**13.** In section 7 of the Court Fees Act, 1870, in its application Amendment of sec. 7 to the Presidency of Bombay, in this Part of Act VII of 1870. referred to as the said Act,—

- (a) to clause (d) of paragraph (iv) the words "or other consequential relief" shall be added;
- (b) after the word "appeal" in paragraph (iv) the words "with a minimum fee of rupees five in the case of suits falling under clause (c)" shall be inserted; and
- (c) in clauses (1), (2) and (3) of the proviso to paragraph (v) for the words "five", "ten" and "ten" the words "seven and a half", "fifteen" and "fifteen" shall, respectively, be substituted.

**13.** For Articles 1, 8, 11, 12 and 12-A of, and the Table of rates Amendment of Schedule I to the said Act the following shall be substituted namely:—

\* This Act has been extended by Bom. Act I of 1935 by which it is to remain in force up to 31st March 1936 unless extended for a further period.

- Most favoured nation treatment (cf. *Corr. of Sir John Mardonald*, p. 332), 848, 849; ought to be extended to all parts of the Empire by other parts, 855, 856; accorded by the Union of South Africa to the United Kingdom, 935; but as general principle for whole Empire not accepted in the Union, 936.
- Mostyn, Mr., Governor of Minorca, legal liability of, for official actions, 96.
- Mount Rennie case, prerogative of mercy in connexion with, 1114.
- Mowat, Sir Oliver, G.C.M.G., Premier of Ontario (1872-96), Minister of Justice, Canada (1896-7), Lieutenant-Governor of Ontario (1897-1903), asserts provincial rights, 234 n. 1, 248, 513 n. 1, 516, 560, 1019.
- Mozambique, relations of, with Transvaal and Union of South Africa (negotiations in 1927 in progress), 224, 706, 734, 909; assists in deportation of British Indians, 829.
- Mulcahy, General, Minister of Defence, resigns office in Irish Free State (restored to ministry in 1927), 237 n. 1.
- Mulgrave, Lord, Lieutenant-Governor of Nova Scotia, imposes conditions on a ministry, 171.
- Multilateral treaties, under League of Nations, coming into operation of, 910.
- Municipal franchise, Natal tries to take away from British Indians, 825; Union of South Africa permits proposal, 835 n. 1.
- Municipal institutions, Canadian provincial powers as to, 554; Union provincial powers as to, 723, 726.
- Municipal Proclamation*, South-West Africa, 1059.
- Murray, Sir H., K.C.B., Governor of Newfoundland (1896-8), alters speech at opening of Parliament, 281; opposes sale of railway, 777; removes Mr. Morine from office, 778.
- Musgrave, Sir A., G.C.M.G., Governor of Queensland, quarrels with Premier on pardon issue, 1114.
- Muskat, treaty with, of 19 March 1891 (Australia withdraws, 3 December 1923), 848.
- Muskat Order in Council*, applies to Dominion British subjects, 1039 n. 5.
- Musalim League, demands political concessions in India, 46.
- Mussolini, Signor, dictatorship in Italy, 47, 839 n. 1.
- Mutiny Proclamation of 1858, declaration in, of obligations to Indian subjects, 815, 816.
- Mutual Assistance, draft treaty of 1923 for, not acceptable to Dominions, 890.
- Natal, Colony until 1910: representative government, 11; responsible government, 30-33; legal basis of responsible government, 59, 60; claims against the Crown, 102; Executive Council, 109; Legislative Council, 113; martial law, 192, 193, 215-17, 220; Executive Council and Cabinet, 226, 227; no political parties possible, 255; referendum on union, 309; amendment of the constitution, 355; privileges, 367; House of Assembly, 401, 402; membership, 402; duration, 412; Upper House, 441; relations of the two houses, 463; reservation of Bills, 753, 758; disallowance, 759; land control, 773; native affairs, 781, 790; British Indians, 823, 824; naval defence, 972; judicial tenure, 1073; prerogative of mercy, 1118; Church affairs, 1127-31; Church endowments, 1138.
- Natal, Province of the Union of South Africa, Part IV, chap. iii.
- Natal Act (No. 1 of 1897) accepted by Imperial Government as model means of excluding Asiatics, 814.
- Natal Native Trust (letters patent, 27 April 1864; Act No. 49 of 1903), 801.
- Nathan, Sir Matthew, G.C.M.G., Governor of Natal (1907-10), views on martial law, 199, 221.
- National Anthem, played in honour of Governor, 1026.
- National Defence Act*, 1922, Canada, 990 n. 1.
- National (League) Party, in Irish Free State, joins Labour and Fianna Fail against the Government in August 1927, 1254.
- Nationalist Party, in Union of South Africa, 256, 257, 1031 n. 2, 1166, 1167, 1251; effect on attitude of, due to Imperial Federation propaganda, vii.
- Nationality, Part V, chap. xiii; and see Table of Contents.
- Native Administration Proclamation*, 1922, South-West Africa, 1059.
- Native Affairs Act*, 1920, Union of South Africa, 803.
- Native Affairs Administration Bill, Union of South Africa, 801.
- Native Affairs Commission, 1903-5, South Africa, 706.

*Ad Valorem Fees—Contd.*

Number.		Proper Fee.
<p>8. Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn.</p> <p>11. Probate of a will or letters of administration with or without will annexed.</p>	<p>in excess of thirty thousand rupees up to fifty thousand rupees.</p> <p>when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.</p> <p>Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees.</p>	<p>Thirty rupees.</p>
	<p>(a) When the stamp duty chargeable on the original does not exceed one rupee,</p> <p>(b) In any other case.</p>	<p>The amount of the duty chargeable on the original.</p> <p>One rupee.</p>
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to the ten thousand rupees.</p>	<p>Two per centum.</p>
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees.</p>	<p>Three per centum.</p>
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh rupees.</p>	<p>Four per centum.</p>
	<p>When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees, up to two lakhs of rupees.</p>	<p>Four and a half per centum.</p>

- Nepal, treaty with, not concurred in by Dominions, 902.
- Nr temere* decree, no direct legal effect in Quebec, 1108.
- Netherlands, cede Cape of Good Hope to British Crown, 11; treaty relations with Canada, 857, 901 n. 1; arbitration treaty with, 902 n. 3.
- Netherlands language, official use of, in South Africa, 736, 737, 738.
- Neutral vessels, possibility of belligerent right to sink, made an objection to Declaration of London by Dominions, 873.
- Neutrality, of Dominions in British war, legal impossibility of, 314, 867, 868, 871, 872, 892, 917, 974 n. 3, 1157, 1234.
- Neutrality for Colonies, Victorian proposal of (cf. Mr. E. W. Watkin's statement of Bright's idea of neutralization of Canada in a war with United States; *Corr. of Sir John Macdonald*, p. 23, 18 Feb. 1865), 598, 599.
- New Brunswick, colony until 1867, then province of Canada: representative government, 6; responsible government, 20, 21; legal basis of responsible government, 52; deputy Lieutenant-Governor, 74; seal, 90; Executive Council, 107, 109; and Cabinet, 226, 227; Cabinet, 240, political parties, 249; Agent-General, 283; Civil Service, 289; legislative powers, 302 n. 2, 321; amendment of the constitution, 356; privileges, 370 n. 1; form of Acts, 375; Legislative Assembly, 393, 394, 395, 396; membership, 405; duration, 411; redistribution, 423; disputed elections, 424; entry into federation, 506, 507, 510; uniformity of laws with Ontario, 521; education, 537; disallowance of Acts, 560-9; boundaries, 585, 586; judicial tenure, 1067; organization, 1075; appeals to Privy Council (Order in Council, 7 November 1910), 1091; Church, 1127, 1132.
- New Caledonia, Australasian concern regarding influx of criminals into, 869.
- Newcastle, bishopric of, 1126.
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- Newfoundland: representative government (two houses amalgamated, 10 nominee, 15 elective, 1842-7; 5 & 1 Vict. c. 120; Prowse, pp. 456 f.), 8; responsible government, 8, 22; legal basis of responsible government, 54; administration of government, 73; salary of Governor, 75; letters patent, 80; seal, 91; Executive Government, 107, 109; summons, prorogation, and dissolution of Parliament, 113; refusal of dissolution, 168, 169, 175-7; financial irregularities, 188; proposed suspension of responsible government, 214; Executive Council and Cabinet, 226, 227; and Parliament, 228; Cabinet, 241; political parties, 250; High Commissioner, 282; Civil Service, 291, 292; legislative powers of the Parliament 301, 302 n. 2; extension of duration 308; amendment of the constitution 356; privileges, 366, 367; form of Acts, 375; lower house, 397; members of Parliament, 405; duration 411; upper chamber, 429, 430; relations of two houses, 472-4; question of federation (cf. *Corr. of Sir John Macdonald*, pp. 61-3, 469 f.), 510; reservation of Bills, 752, 753, 756; disallowance, 759; land control, 773; domestic concerns, 776-8; natives 781; currency, 940; copyright, 958; military defence, 970, 983, 984, 996, 997; naval defence, 1001, 1017; naturalization, 1043; judicial tenure, 1068; appeals, 1091; prerogative of mercy, 1119; Bishop, 1125, 1126; no desire for independence 1165; *modus vivendi* as to fisheries 220, 862; Order in Council as to, 281, 746, 748; style of Dominion, xx.
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- Newfoundland constabulary, 997.
- Newfoundland Fishery, Order in Council, 1907, 281, 746, 748; to enforce *modus vivendi*, 846, 862.
- New Guinea, 93, 94; Queensland effort to annex, 599, 868; see also Papua.
- New Guinea, German, transferred under mandate to the Commonwealth of Australia, 1054, 1055.
- New Guinea Act*, 1920, Commonwealth of Australia, 628 n. 3, 1054, 1055; legal basis of, 1040 n. 2.
- New Hebrides, Australasian interest in (convention with France in 1914; modified by notes exchanged on 17-21 February 1927; Cmd. 2829), 599, 869, 870, 916, 1205, 1210.

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Number.		Proper Fee,
<p>12. Certificate under Part X of the Indian Succession Act, 1925.</p>	<p>respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.</p>	<p>The fee leviable in the case of a probate (Article 11) on the amount or value of any debt or security specified in the certificate under sec. 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under s. 376 of the Act.</p> <p><b>NOTE.</b>—(1) The amount of a debt is its amount including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.</p> <p>(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act; and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied</p>



- Niobe*, H.M.C.S., 1011.
- nisi prius* decisions, not binding on other judges, 1003.
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- Non-co-operation, foolish policy of, in India, 48.
- Non-representative legislature, occasionally able to amend Constitution (e.g. Dominica in 1924), 350.
- Non-residents, Imperial intervention as to matters affecting, 706-70.
- Non-technical treaties must in certain cases apply to the whole of the Empire, x, 912, 913.
- Norfolk Island, administration of, 223 n. 1, 628, 686, 687; landing-place of Pacific cable, 1218.
- Norfolk Island Act*, 1913, Commonwealth of Australia, 628 n. 3.
- Normanby, Marquis of, Governor of New Zealand (1874-9), episodes of his government, 119, 160, 161, 177, 381, 383, 480.
- Norris, Hon. T. C., Premier of Manitoba, loses control of his Cabinet, 236 n. 2.
- North American Indians, in certain cases disqualified for franchise, 395; Part V, chap. iii, § 2.
- North Australia, administration of, 686.
- North Russia, Canadian force serves in, 983.
- North Sea, arrangement for *status quo* in, concluded without Dominion consultation, 872.
- Northote, Earl of, G.C.M.G., G.C.I.E., C.B., Governor-General of the Commonwealth of Australia (1904-8), gives Australia good advice in his valedictory speech, 279; protests against illegal expenditure in the Transvaal, 187.
- Northern Australia Act*, 1926, Commonwealth of Australia, 686.
- Northern Ireland: responsible government, 40, 41; legal basis of responsible government, 62, 63; Executive Council, 108; summons, prorogation, and dissolution of Parliament, 113; Executive Council and Cabinet, 227, 228; and Parliament, 228; Cabinet, 245; political parties, 258; Civil Service, 296; constitutional limitations, 316-18; legislative powers of Parliament, 349 n. 1; amendment of the Constitution, 360; audit law, 366 n. 2; House of Commons, 403, 404; Members of Parliament, 410, 411; duration, 412; proportional representation, 419; Upper Chamber, 444, 445; reservation of bills, 755, 757; no power of disallowance, 759; judicial tenure, 1073, 1074; reference to the Privy Council and appeal to the House of Lords, 1108; prerogative of mercy, 1119; religious questions, 1139, 1140; constitutional position of the Governor, 1230; included in term United Kingdom, xx.
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- Northern Rhodesia, administration of, 37, 224, 740.
- Northern Solomon Islands, acquired in 1899 by United Kingdom, 869, 870.
- Northern Territory, Commonwealth of Australia, administration of, 684-6.
- Northern Territory (Administration) Act*, 1910, Commonwealth of Australia, 685.
- Northern Territory (Administration) Act*, 1926, Commonwealth of Australia, 686.
- North-West Territories, Canada, 21, 302, 376, 507, 508, 511, 582-4.
- North-West Territories Act Amendment Act*, 1925, Canada, 335, 582.
- Norway, treaty of 1826 with, 848; modified in favour of Dominions in 1913, 849, 875; arbitration treaty with, 902 n. 3.
- Notaries in Victoria, appointed under 25 Henry VIII, c. 21, 1086.
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When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
380	390	29 4	780	790	59 4
390	400	30 0	790	800	60 0
400	410	30 12	800	810	60 12
410	420	31 8	810	820	61 8
420	430	32 4	820	830	62 4
430	440	33 0	830	840	63 0
440	450	33 12	840	850	63 12
450	460	34 8	850	860	64 8
460	470	35 4	860	870	65 4
470	480	36 0	870	880	66 0
480	490	36 12	880	890	66 12
490	500	37 8	890	900	67 8
500	510	38 4	900	910	68 4
510	520	39 0	910	920	69 0
520	530	39 12	920	930	69 12
530	540	40 8	930	940	70 8
540	550	41 4	940	950	71 4
550	560	42 0	950	960	72 0
560	570	42 12	960	970	72 12
570	580	43 8	970	980	73 8
580	590	44 4	980	990	74 4
590	600	45 0	990	1,000	75 0
600	610	45 12	1,000	1,100	80 0
610	620	46 8	1,100	1,200	85 0
620	630	47 4	1,200	1,300	90 0
630	640	48 0	1,300	1,400	95 0
640	650	48 12	1,400	1,500	100 0
650	660	49 8	1,500	1,600	105 0
660	670	50 4	1,600	1,700	110 0
670	680	51 0	1,700	1,800	115 0
680	690	51 12	1,800	1,900	120 0
690	700	52 8	1,900	2,000	125 0
700	710	53 4	2,000	2,100	130 0
710	720	54 0	2,100	2,200	135 0
720	730	54 12	2,200	2,300	140 0
730	740	55 8	2,300	2,400	145 0
740	750	56 4	2,400	2,500	150 0
750	760	57 0	2,500	2,600	155 0
760	770	57 12	2,600	2,700	160 0
770	780	58 8	2,700	2,800	165 0

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- Opposition Leader in Dominions, payment of, 248 n. 1, 414.
- Orange Free State, Province of the Union of South Africa, Part IV, chap. iii.
- Orange River Colony: responsible government, 33, 34; legal basis of responsible government, 60; letters patent, 80; claims against the Crown, 102; Executive Council, 110; summons, prorogation, and dissolution of Parliament, 113; Executive Council and Cabinet, 226, 227; and Parliament, 228; no political parties, 256; amendment of the constitution, 355; privileges, 368; language, 377; Assembly, 402; members, 402; duration, 412; Upper Chamber, 441; relations of the two Houses, 463; reservation of bills, 753, 754; disallowance, 759; land control, 773; native administration, 781; British Indians, 829, 830, 831; judicial tenure, 1073; prerogative of mercy, 1118; religious endowment, 1138.
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- Oriental Orders in Council Validation Act*, 1921, British Columbia, 543 n. 2.
- Origin and development of representative government, 3-11.
- Orlando, Signor, represents Italy at Peace Conference, 1195.
- Ottawa, capital of Canada, 18.
- Ottawa Branch of Royal Mint, 938.
- Otter, Brig.-Gen. W. D., Inspector-General of the Canadian Militia, 970.
- Ovamboland, exempt from South-West African pass law, 1059.
- Overseas Defence Committee, name since 1911 of Colonial Defence Committee.
- Overseas Military Council of Canada, 980.
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- Oxford and Asquith, Earl of, unsound views on royal discretion as to dissolution of Parliament, 148, and *see* Asquith.
- Oyer et terminer, courts of, prerogative power to create in Canada (cf. Greene, *Provincial Governor*, pp. 137-9), 546.
- Pacific, Australasian interests in the, 866-71.
- Pacific Cable, Acts as to the (*Pacific Cable Act*, 1927, 17 & 18 Geo. V, c. 9), 1245.
- Pacific Cable Board, 1231, 1245.
- Pacific Halibut Fisheries Treaty, 1923, constitutional questions concerning, 766 n. 1, 897, 898, 899 n. 1, 1034 n. 1.
- Pacific Islanders Labour Acts*, 1901-6, Commonwealth of Australia, 626 n. 4.
- Pacific Islanders' Protection Acts*, 1872 and 1875, Imperial, 222, 837, 868, 1081, 1085.
- Pacific Islands, natives of, denied franchise in Commonwealth, 397; in Queensland, 399; in Western Australia, 400; in South Africa, 401, 402.
- Pacific Islands Regulations (Validation) Act*, 1916, Imperial, 1040.
- Pacific Phosphates Co., transfer of property of, 1053.
- Pacific Railway, 578, 579; Sir John Macdonald's disallowance of Manitoba railway Acts in interests of the (cf. *Corr. of Sir John Macdonald*, pp. 403 f.), 565.
- Pacific Railway Scandal in Canada, 105, 124, 125, 1078.
- Pacific Seal Fishery Treaty, 1911, between United Kingdom, United States, Russia, and Japan, 903.
- Pacific Settlement of International Disputes, protocol for, 890, 891.
- Page, Hon. Earle Christmas Grafton, Treasurer (1923- ) of the Commonwealth of Australia, leader of the Country party, 142, 231, 233, 251.
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- Palestine, Dominion forces serve in, 983, 987, 988, 989.
- Palmer, Sir R., later Lord Selborne, report of, as to copyright legislation, 344.
- Palmerston, Lord, Prime Minister of the United Kingdom, precedent of his action in 1858, 174.

and the fee increases at the rate of thirty rupees for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

Rs.	Rs.	A.
1,00,000	1,925	0
2,00,000	2,525	0
3,00,000	3,125	0
4,00,000	3,725	0
5,00,000	4,325	0
6,00,000	4,925	0
7,00,000	5,525	0
8,00,000	6,125	0
9,00,000	6,725	0
10,00,000	7,325	0
11,00,000	7,925	0
12,00,000	8,525	0
13,00,000	9,125	0
14,00,000	9,725	0
15,00,000	10,000	0

Amendment of Schedule II to Act VIII of 1870.

14. For Articles 1, 6, 7, 12, 14, 17, 18, 19, 20 and 21 of Schedule II to the said Act the following shall be substituted, namely:—

#### SCHEDULE II.

##### *Fixed Fees.*

Number.		Proper fee.
1, Application petition.	or (a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings : or when presented to any officer of land revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement. or when presented to any Municipal Commissioner under any Act for the time	Two annas

- Patriot*, H.M.C.S., 1014.
- Patterson, pardon of, against ministerial advice, in Canada, 1112.
- Payment of members of Dominion Parliaments (in Canadian provinces salaries have steadily increased since 1920 (*Canadian Annual Review*, 1920, p. 449), Alberta, British Columbia (1921), Quebec, Ontario (if session exceeds 30 days, 1925, c. 8) give 2,000 dollars; Saskatchewan, 1,800; Manitoba, 1,500; Nova Scotia, New Brunswick, 1,000), 412-14, 476, 477.
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- Peace Officers Act*, 1925, Commonwealth of Australia, 659 n. 5.
- Peace Preservation Ordinance*, 1903, Transvaal, used to prevent return of Indians, 827.
- Peace treaties, 1919-23, mode of signature, 880, 881; mode of giving effect to, 924, 925.
- Pearl fisheries, mode of regulating, 324.
- Pearl-shell industry, Australia, Asiatics employed in, 817.
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- Pecuniary Claims Treaty, 1911, with United States, 866.
- Peel, Rt. Hon. Sir Robert, refuses to assent to Reform in 1832, 155.
- Peel, Lord, Secretary of State for India, represents India badly at the Imperial Conference of 1923, 1200.
- Peerages, awarded for Dominion services, 1023; resented in Canada, 1021; legislation to extinguish hereditary effect of, vainly asked for, 314, 315.
- Pelagic Sealing Treaty of 1911, 866.
- P. & O. Steamship Co., attack on, in New Zealand, 948.
- Penny postage, for Imperial purposes, 1179, 1191.
- Pensions for civil servants (given in Victoria by Act of 1925 on model of Commonwealth of Australia), 291.
- People, need not in law be consulted by Parliament before passing of important legislation, 307-9, 1254.
- People of any race other than aboriginal natives of States, Commonwealth power to legislate differentially for, 626.
- Perjury, made punishable by Imperial Act in place other than where fabricated, 1033, 1034.
- Perjury Act*, 1911, Imperial, not applicable to aliens abroad, 1041.
- Perley, Hon. Sir G., represents Canada as High Commissioner in London, 878, 970, 1041.
- Permanent Court of International Justice, Dominion relations to, 846, 851, 858, 859, 1150; protocol creating, 916, 924 n. 4, 1051; understanding reached at Imperial Conference of 1926 against separate adherence of any Dominion to compulsory clause of, 1231.
- Permanent Mandates Commission, League of Nations, functions of, 1051, 1052; condemns position of Chinese in Nauru, 1064.
- Permanent Under-Secretaries of State for the Dominions and Colonies, rejected in 1911, 1187.
- Persia, supports claim of Six Nation Indians to national status, 785; treaty of 21 March 1920 with (Australia and Canada withdraw, 18 Feb. 1922), 849 n. 4; Imperial acts alone can regulate British subjects in, 1228; opposes modification of Art. X of League of Nations Covenant, 888.
- Persia Order in Council, applies to Dominion British subjects, 1039 n. 5, 1228.
- Perth, capital of Western Australia, bishopric of, 1126.
- Perth Branch of Royal Mint, 938.
- Petersen, Sir William, proposes to supply Canada with steamship service, 1200.
- Petition of right, in United Kingdom and Dominions, 100-3; lies only in United Kingdom in respect of debts of the Crown in the right of the United Kingdom, 1154.
- Petitions to the King from persons in Dominions, 78.
- Petrol Tax, South Australia, ruled invalid as a duty of excise (cf. *Attorney-General for British Columbia v. Canadian Pacific Railway Co.*, 43 T.L.R. 750), 1250.
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*Fixed Fees—Contd.*

Number.		Proper fee.
Trust or for appointment of Trustees, under sections 34, 72, 73 or 74 of the Indian Trusts Act, 1882;		
(e) for the winding up of a company, under section 166 of the Indian Companies Act, 1913.		Ten rupees.
(f) under Rule 58 of Order XXI of the Code of Civil Procedure, 1908, regarding a claim to attached property,	When the amount or value of the property exceeds five hundred rupees.	Ten rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.		Twenty rupees.
20. Every petition under the Indian Divorce Act, 1869, except petition under section 44 of that Act and every memorandum of appeal under section 55 of that Act.		Thirty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.		Thirty rupees,

**CENTRAL PROVINCES ACT No. XVI OF 1935**  
**THE COURT-FEES (CENTRAL PROVINCES AMENDMENT)**  
**ACT, 1935.**

*An Act to amend the Court-Fees Act, 1870, with reference to the scale of court-fees in the Central Provinces.*

Whereas it is expedient to revise the scale of court-fees for the Central Provinces by amendment of the Court-Fees Act, 1870, in its application to the Central Provinces, in the manner hereinafter appearing ;

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- Provincial Subsidies and Taxation Powers (Amendment) Act*, 1925, Union of South Africa, 722, 723.
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- Prussia, Hanoverian alliance with, against Sweden, independently of United Kingdom, 1169.
- Psyche*, H.M.A.S., 1011.
- Public Account Advances Act*, 1923, Victoria, 361 n. 3.
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- Public Safety (Emergency Powers) Act*, 1926, No. 42, Irish Free State, 319 n. 1.
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- Public Safety Preservation Act*, 1923, Victoria, 661 n. 1.
- Public Service (South Australia, No. 1716: Classification and Efficiency Board to fix salaries; No. 1676: Police Appeal Board to advise on appeals from Commissioner of Police; Victoria, No. 3408: superannuation as Commonwealth basis), Part II, chap. viii.
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- Public Service Act*, 1912, New Zealand, 295.
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- Public Works Act*, 1900, New South Wales, 494.
- Public Works Committee, in Commonwealth of Australia, 404; in New South Wales, 494.
- Publication of documents by Governor without ministerial aid (cf. advice of Sir J. Macdonald to Lieutenant-Governor of Quebec (22 Sept. 1888) to dismiss minister if he refused to publish disallowance of *District Magistrates Act*, or to publish under his seal and signature, without counter-signature; the minister yielded; *Correspondence*, pp. 425-9), 746.
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- Pursuit, doctrine of hot, adopted by Canadian Courts, 1001 n. 2.
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- Quebec Order of Agricultural Merit, xxii.
- Quebec Resolutions for federation, 1864, 506.
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(b) after Article 1, the following Article shall be inserted, namely :—

" 1-A. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3, in suits other than those provided for in Article 1.

When the amount or value of the subject-matter in dispute does not exceed five rupees	Six annas.
When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, up to one thousand rupees.	Twelve annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees.
When such amount or value exceeds five thousand rupees for every two hundred rupees or part thereof, in excess of five thousand rupees, up to ten thousand rupees.	Ten rupees.
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof in excess of ten thousand rupees, up to twenty thousand rupees.	Twenty rupees.
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.

- Rectories, endowment of, in Upper Canada, 1137, 1138.
- Red ensign, use of, by mercantile marine, 1030.
- Red River rebellion and expedition in Canada, 508, 978.
- Redistribution Act*, 1924, Canada, 396.
- Redistribution Act*, 1925, Newfoundland, 397.
- Redistribution of seats, Canada, 395, 396; in Commonwealth of Australia, 398; in Irish Free State, 404; in other Dominions, &c., 420-3.
- Redistribution of Seats Act*, 1911, Western Australia, 354.
- Redmond, John, M.P., Irish statesman, 39.
- Redmond, Captain W., leader of National League Party in Irish Free State, supports Labour and Fianna Fail in attack on Government in Aug. 1927, App. G.
- Reduction and limitation of armaments, Imperial Conference of 1926 approves principles of, 1237.
- Re-election on appointment as Minister, 55, 56, 57, 229, 230; required in Canada, 405; in Newfoundland, 405; not in Australia, 406, 407, 408; in New Zealand, 409; in South Africa, 409; in Southern Rhodesia, 410; in Malta, 410; in Ireland, 410, 411.
- Reeves, Hon. W. Pember, Minister and later High Commissioner for New Zealand, 264.
- Reference of differences between Governors and Ministers to Secretary of State (unwisely declined by Lord Byng in 1926), xxi, xxii, 134.
- References to Privy Council (provided for by *Government of Ireland Act*, 1920, for Northern Ireland), 1106, 1107; to Canadian Supreme Court and provincial Courts, 1108.
- Referenda on conscription in Australia, 985, 986.
- Referenda on constitutional issues in Australian Commonwealth, 690-701; in Irish Free State, 359, App. G.
- Referenda on various subjects in Dominions, 305-7.
- Referendum, principles affecting, in Dominions, 303-7; in Australia, 137, 654; in Irish Free State (suggested in Aug. 1927 on Bill to amend electoral law), 307, 359, App. G.; in Southern Rhodesian constitution, 37; on union of South Africa in Natal, 707.
- Reform Party, New Zealand (cf. W. P. Reeves' *Long White Cloud*), 255.
- Refusal of assent to Dominion Bills passed by both Houses, 748-50.
- Refusal of assent to provincial Acts in Canada, 563, 564.
- Regency Act*, 1910, Imperial, 1033.
- Registered shipping, Dominion power to regulate their, 942, 945.
- Registration of birth at British consulate as means of securing British nationality, 1236.
- Registration of naturalized aliens resident abroad, at British consulate, 1236.
- Registration of treaties, by League Secretariat, in respect of inter-imperial treaties, 884, 885.
- Regulation, right of, does not normally in Canada include right to prohibit, 559.
- Rehobotha, exempt from South-West Africa pass law, 1059.
- Reid, Rt. Hon. Sir George Houston, G.C.M.G., Premier of New South Wales (1894-9), of the Commonwealth of Australia (1904-5), later High Commissioner, is refused dissolution in 1899, 163; in the Commonwealth in 1905, 164; referred to, 139, 151, 152, 280, 283, 453.
- Reid, Sir W. D., interferes in Newfoundland politics, 134.
- Reid railway deal in Newfoundland, 777-9.
- Relations of the Legislative powers of the States and the Commonwealth, 631-61; of the provinces of Canada and the Dominion, 519-59.
- Religion, influence of, on public life, 780, 1140, 1141; restrictions on powers of Commonwealth of Australia as regards, 625; of Irish Free State and Northern Ireland, 317-19, 1139; of Malta, 1139.
- Religious grounds, no person may be prejudiced on, in Commonwealth of Australia by federal Act, 625; in Irish Free State and Northern Ireland, 1139; in Malta, 1139.
- Removal of Executive Councillors, 20.
- Reparations, Empire share in enemy, 1205.
- Repatriation of Indians from South Africa, 834, 835, 836, App. B.
- Repeal of Dominion or provincial Acts in Canada, 559.
- Report of the Committee of the Imperial Conference of 1926 on Inter-Imperial Relations, Part VIII, chap. iii, § 8; Lord Balfour's Edinburgh address on, xiii, xiv, xix; significance of, in author's view, xviii, xix.

VIII of 1827 in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.

12. Certificate under Part X of the Indian Succession Act, 1925, (XXXIX of 1925).

When the amount or value of any debt or security specified in the certificate under section 374 of the Act exceeds one thousand rupees but does not exceed five thousand rupees.

Two per centum on such amount or value and three per centum on the amount of any debt or security to which the certificate extended under section 376 of the Act

When such amount or value exceeds five thousand rupees but does not exceed ten thousand rupees.

One hundred rupees plus two and a half per centum on the amount or value in excess of five thousand rupees, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act.

When such amount or value exceeds ten thousand rupees.

Two hundred and fifty rupees plus three per centum on the amount or value in excess of ten thousand rupees and seven and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act";

Amendment of Table of rates of *ad valorem* fees.

(f) for the Table of rates of *ad valorem* fee leviable on the institution of suits the following Table shall be substituted, namely :—

- Roads, federal aid to, in the Commonwealth of Australia, 1250.
- Roberts, J. H., imprisoned in Quebec for breach of privilege, 372, 373, 569 n. 3.
- Robertson, Hon. Sir John, K.C.M.G., Premier of New South Wales (1875-7, 1885-6), 162, 163.
- Robinson, Rt. Hon. Sir Hercules, Bart., G.C.M.G. (Lord Rosmead), Governor of New South Wales (1872-9), of New Zealand (1879-80), 119, 552, 973.
- Robinson, Hon. Sir John, urges grant of responsible government to Natal, 33.
- Roblin, Hon. Sir R. P., K.C.M.G., Premier of Manitoba, 234 n. 1, 249; compelled to leave office by Lieutenant-Governor, 133.
- Roebuck, J. A., doubts possibility of retaining Canada, 1156.
- Rogers, Hon. Robert, Minister of Public Works, Canada (1911-12, 1915-17), resigns office in Borden Cabinet in 1917, 235; alleged promises to British Indians, 821.
- Rogers, Sir F. (Lord Blachford), Permanent Under-Secretary of State at the Colonial Office (1859-71), 1156.
- Roman Catholic Bishop, in Irish Free State, can remove priest without assigning reason, 1080, 1090.
- Roman Catholic Bishop of Charlottetown, Act incorporating disallowed, 776.
- Roman Catholic Church in Canada, 582, 1125, 1132, 1133.
- Roman Catholic religion in Malta, 50, 1125, 1139.
- Roman-Dutch law, in South Africa, 729.
- Roman-Dutch law introduced into South-West Africa, 1058.
- Romilly, Lord, M.R., views of, on ecclesiastical powers of Crown, 1129, 1130.
- Roos, Hon. Tielman, leader of the Nationalist party in the Transvaal and Minister of Justice of the Union of South Africa (1924- ), 257, 389, 804, 917 n. 2, 936, 1166, 1251.
- Rosario Channel as international boundary of Canada, 864.
- Rosebery, Lord, Queen Victoria's unfortunate selection of, on her own responsibility, as Prime Minister, 272; supports Imperial federation, 1158, 1160.
- Rosengulz, M., informed of Canadian termination of trade agreement of 1921, 1252 n. 2.
- Ross, Hon. G. W., Premier of Ontario, resigns office in 1905, 248.
- Ross Dependency, probable illegality of regulations for, xviii, 792, 1030.
- 'Ross' rifle, disused by Canadian forces (cf. *British America*, p. 150) 990.
- Rossi, Mr., case of proposed dismissal of in New South Wales, 973.
- Round Table group, muddle-headed federal propaganda of, 1162, 1195 untoward effects of their well-mean blunders, vii.
- Rowell, Hon. N. W., K.C., joins coalition government, 981; supports Liberal party in 1926 election in Canada 151; defends League of Nations, 883 884.
- Royal, style of, granted by the King 762, 1030, 1031 n. 5; given to Canadian and Australian navies in 1911, 1008.
- Royal and Parliamentary Titles Act* 1927, xx.
- Royal arms, used by tradesmen, 1031.
- Royal Canadian Naval Reserve, 1014.
- Royal Charters, prerogative to grant how far delegated to Governors with out express words, 85, 86, 762, 1104 n. 1, 1106.
- Royal Colonial Institute, services of, to Imperial unity, 1158, 1159.
- Royal Commission and Instructions to Canada in 1763, 4, 6.
- Royal Commission in the Commonwealth of Australia to inquire into the constitutional powers of the Commonwealth (especially as regards aviation, company law, health, industrial powers, judicial powers navigation, taxation, trade and commerce, the Inter-State Commission and creation of new States), and to recommend changes, appointed Aug 1927, 1250.
- Royal Commission on Honours, Report of, 1022 n. 1.
- Royal Commissions, judges and, 1076.
- Royal Commissions Act*, 1902, amended in 1912, Commonwealth of Australia 652.
- Royal effigy, on coins and stamps, 940
- Royal family, precedence of, in Dominions, 1027.
- Royal fish, prerogative as to, in abeyance in Dominions (cf. Instructions to F. Bernard, New Jersey, 1758, s. 55) 104.
- Royal Guardians of Canada, 762.
- Royal Indian Marine (see now *Governments of India (Indian Navy) Act* 1927, 17 & 18 Geo. V, c. 8), 1017.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
620	630	47 4	1,100	1,200	87 0
630	640	48 0	1,200	1,300	93 0
640	650	48 12	1,300	1,400	99 0
650	660	49 8	1,400	1,500	105 0
660	670	50 4	1,500	1,600	111 0
670	680	51 0	1,600	1,700	117 0
680	690	51 12	1,700	1,800	123 0
690	700	52 8	1,800	1,900	129 0
700	710	53 4	1,900	2,000	135 0
710	720	54 0	2,000	2,100	141 0
720	730	54 12	2,100	2,200	147 0
730	740	55 8	2,200	2,300	153 0
740	750	56 4	2,300	2,400	159 0
750	760	57 0	2,400	2,500	165 0
760	770	57 12	2,500	2,600	171 0
770	780	58 8	2,600	2,700	177 0
780	790	59 4	2,700	2,800	183 0
790	800	60 0	2,800	2,900	189 0
800	810	60 12	2,900	3,000	195 0
810	820	61 8	3,000	3,100	201 0
820	830	62 4	3,100	3,200	207 0
830	840	63 0	3,200	3,300	213 0
840	850	63 12	3,300	3,400	219 0
850	860	64 8	3,400	3,500	225 0
860	870	65 4	3,500	3,600	231 0
870	880	66 0	3,600	3,700	237 0
880	890	66 12	2,700	3,800	243 0
890	900	67 8	3,800	3,900	249 0
900	910	68 4	3,900	4,000	255 0
910	920	69 0	4,000	4,100	261 0
920	930	69 12	4,100	4,200	267 0
930	940	70 8	4,200	4,300	273 0
940	950	71 4	4,300	4,400	279 0
950	960	72 0	4,400	4,500	285 0
960	970	72 12	4,500	4,600	291 0
970	980	73 8	4,600	4,700	297 0
980	990	74 4	4,700	4,800	303 0
990	1,000	75 0	4,800	4,900	309 0
1,000	1,100	81 0	4,900	5,000	315 0

- Saorstát Éireann, Irish name of Irish Free State, *q.v.*
- Sapru, Sir Tej Bahadur, makes effective defence of Indian interests at Imperial Conference of 1923, 834, 1208.
- Saskatchewan, province of the Dominion of Canada since 1905: representative government, 8; responsible government, 21; legal basis of responsible government, 52; deputy Lieutenant-Governor, 74; provincial seal, 90; Executive Council, 107; and Cabinet, 226, 227; Cabinet, 240; political parties, 249; Agent-General, 283; legislative powers, 302 n. 2, 321; referendum, 306 n. 2; privileges, 370; unicameral, 391; Legislative Assembly, 394, 395, 396; membership, 405; duration, 411; redistribution, 423; disputed elections, 424; entry into federation, 510, 511; liquor legislation, 529; education, 539; disallowance of Acts, 560-9; amendment of constitution, 572; created a province, 582; boundaries, 586; lands, 772, 773; judicial organization (6 Geo. V, cc. 9, 10), 1075; appeal to Privy Council (Order in Council, 13 October 1910, re-enacted to meet abolition of Supreme Court by 6 Geo. V, c. 10, 4 June 1918), 1091.
- Saturday Voting Act*, 1926, Victoria, 422 n. 2.
- Savagery of suppression of rebellion in Irish Free State (resulting in assassination of Mr. K. O'Higgins in 1927), 202.
- Scanlan, Hon. Sir Thomas, resigns office in Cape of Good Hope in 1884, 265.
- Schreiner, Hon. W. P., services as High Commissioner for the Union of South Africa, 287; Premier of the Cape of Good Hope, resigns in 1900, 256; attitude of, at Union Conferences, 708.
- Scire facias* (cf. *R. v. Hughes*, 1 P.C. 81), to remove a judge, 1073.
- Scott, Admiral Sir Percy, views of, on value of battleships, 1015.
- Scott, Francis, M.P., Colonial Agent for New South Wales, 282.
- Scott, Hon. Sir R., formerly Secretary of State, Canada, views of, on Canadian Senate, 460.
- Scott, Thomas, murder of, by order of L. Riël, 508.
- Scottish Courts, views of, as to territorial character of Moray Firth, 324.
- Scottish law, not applicable even to Nova Scotia, 3.
- Scratchley, Colonel, report on military needs of Australia, 970.
- Sea Carriage of Goods Acts*, 1904 and 1924, Commonwealth of Australia, 655, 946 n. 2.
- Sea routes, Dominions leave United Kingdom to bear burden of defence of, 1211.
- Seal Fisheries Convention, 1911, Act to enforce, 1034 n. 1, 1086.
- Seal Fisheries (North Pacific) Act*, 1912 Imperial, 1034 n. 1, 1086.
- Seals, public, alteration and custody of by Governor, 89-91.
- Seamen's Act*, 1873, New Zealand, 343.
- Seamen's Compensation Act*, 1909, Commonwealth of Australia, 645.
- Seanad Éireann, Senate of the Irish Free State, *see* Senate.
- Seat of Government (Administration Act)*, 1924, Commonwealth of Australia, 628 n. 1, 683, 684.
- Secession movements and aims in the Dominions, 936, 1155-7, 1166-72, 1233-5; encouraged by unwise propaganda for Imperial Federation *vii.*
- Secession of Dominions, Imperial legislation requisite for, 313, 349.
- Second ballots, failure of, in New Zealand, 415; in New South Wales, 416.
- Secret Commissions Act*, 1905, Commonwealth of Australia, 655.
- Secret sessions of Parliament, 385, 386.
- Secret societies, Canadian Bill as to, reserved in 1843, 776.
- Secretariat of Governors-General and Governors, 75.
- Secretariat of the Imperial Conference, 1181, 1182, 1185, 1186, 1187, 1219.
- Secretary of State for the Colonies (now Dominions) encourages Governors to yield to ministers, 135, 136, App. A; mouthpiece of Crown, 81, 82; office held by statesmen of inferior status, 189 n. 1; properly referred to for advice on constitutional law and usage, *xxi*, *xxii*; recent tendency of, to permit Governors to violate law, *xviii*, 189, 190; sanctions extension of life of New South Wales Parliament as a political ruse, 140; wrongly appoints a pronounced partisan as Lieutenant-Governor of Queensland, 142.
- Secretary of State for Foreign Affairs, proposal that Ministers Resident of Dominions should keep in touch with him, 875, 876, 1219; might be placed in direct correspondence with Ex-

Provided that the maximum fee leviable shall not exceed five thousand rupees."

### 5. In Schedule II to the said Act—

Amendment of Schedule II, Article I, clause (a), Act VII of 1870.

(a) in the third column of Article 1, for the words "One anna" opposite clause (a), the words "Two annas" shall be substituted;

Amendment of Schedule II, Article 1, clause (b), Act VII of 1870.

(b) for clause (b) of Article 1 in the second column and the entry opposite it in the third column, the following clause and entries shall be substituted, namely:—

" (b) When containing a complaint of charge of any offence other than an offence for which police officers may, under the Code of Criminal Procedure, 1898, arrest without warrant, and presented to any Criminal Court;	Twelve annas.
or for orders of arrest or attachment before judgment or for temporary injunctions;	Two rupees.
or for compensation for arrest or attachment before judgment or in respect of a temporary injunction obtained on insufficient grounds:	Two rupees.
or for the appointment of a receiver in a case in which the applicant has no present right of possession of the properties in dispute;	Five rupees.
or for setting aside decrees passed <i>ex parte</i> and for review of orders dismissing suits for default;	Twelve annas.
or when presented to a Civil, Criminal or Revenue Court, or to a Collector, or any Revenue Officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	Twelve annas.
or to deposit in Court revenue or rent;	Eight annas.
or for determination by a Court of the amount of compensation to be paid by landlord to his tenant."	Eight annas.



- discussed at Imperial Conference of 1923, 899; at Imperial Conference of 1926, 910, 1233, 1234.
- Sikhs, in British Columbia, 822.
- Silver coinages, in Australia, 939; in Canada, 938; in Union of South Africa, 940; in Irish Free State, 940; in Newfoundland, 940.
- Silver mines, royal prerogative as to, 104.
- Simon's Town, defence and fortification of, alone of Imperial interest, 972, 1176.
- Sinai Peninsula, Dominions forces serve in, 987, 988.
- Singapore base, defence scheme, xii, 1013, 1211, 1221, 1237.
- Sivewright, Hon. Sir James, politician of Cape of Good Hope, 256 n. 1.
- Six Nation Indians, claim to be allies, not British subjects, 785; strongly object to Mr. Meighen's proposals for compulsory enfranchisement, 787.
- Slave Trade Acts, 1036, 1081, 1085.
- Smith, Adam, *Wealth of Nations*, 1155.
- Smith, Professor Goldwin, author of *Canada and the Canadian Question*, views on uselessness of Governor-General of Canada, 105, 465; on independence of Canada, 1157, 1160.
- Smith, Rt. Hon. W. H., advocates Imperial federation, 1160.
- Smuggling and Narcotics treaty, Canada and the United States, 919 n. 3.
- Smuts, Rt. Hon. J. C., Prime Minister of the Union of South Africa (1919-24), 37, 186 n. 4, 203, 234, 256, 257, 265, 313, 499, 689, 708, 805, 806, 831, 879, 880, 882, 884, 896, 897, 904, 913, 935, 989, 995, 1000, 1014, 1016, 1049, 1052, 1059, 1060, 1145, 1166, 1194, 1195, 1197, 1202, 1203, 1205, 1209, 1212, 1227, 1232; his view of Imperial Conference of 1927, xviii, xix.
- Soft woods, world shortage of, 1241, 1242.
- Solemnization of marriage, legislative power in Canada as to, 555.
- Solicitor-General for the Eastern Districts of the Cape, 731.
- Solicitor-General of Canada, made a Privy Councillor, but not in Cabinet, 227.
- Solomon, Hon. V. L., Premier of South Australia (1899), 163.
- Solomon, Hon. Saul, Cape of Good Hope politician, supports ideal of fair treatment of native races, 708.
- Songhees Indians, in Canada, resumption of lands of, 785 n. 1.
- Sonnino, Baron, represents Italy a Peace Conference, 1195.
- South Africa Act*, 1909, Imperial (amended by No. 9 of 1925 to correct the accidental omission from the preamble of reference to the sovereignty and guidance of Almighty God), Part IV, chap. iii.
- South African Constabulary, 705, 706.
- South African Customs Union, 932, 933.
- South African Division of the Royal Naval Reserve, 1016.
- South African Division of the Royal Naval Volunteer Reserve, 994, 1010.
- South African flag issue, vii, xix, 26; n. 1, 1166 n. 1, 1251.
- South African Garrison Artillery and Coast Defence Corps, 994.
- South African National Convention 1908-9, 707, 708.
- South African Nationals, 1047.
- South African Native Affairs Commission, 1903-5, 799.
- South African Native College, 798.
- South African party, in the Union of South Africa, 256, 257.
- South African Republic, unfairness to Indians, 825; nominal independence of, 1235 n. 1.
- South African War, colonial forces in the, 973, 974, 978, 979.
- South Australia, colony until 1901, then State of the Commonwealth of Australia: representative government, 9; responsible government, 10, 22, 23, 24, 25; legal basis of responsible government, 56, 57; administration, 73; deputy Governor, 74; seal, 91; Executive Council, 107, 109; summons, prorogation, and dissolution of Parliament, 113; refusal of dissolution, 159, 160, 163; control of expenditure, 184; Executive Council and Cabinet, 226, 227; and Parliament, 228; Cabinet, 242; political parties, 253; Agent-General, 282; Civil Service, 293; legislative powers of the Parliament, 302 n. 3, 309; amendment of the constitution, 353, 354; privileges, 368; Speaker and President, 380; reference back of Bills, 384; franchise for Assembly, 399; members of Parliament, 407, 408; duration, 411; payment, 413; redistribution, 423; disputed elections, 424; Upper Chamber, 435, 436; relations of the two houses, 483-7; reservation of Bills, 753, 754; disallowance, 759; land control legis-

" 17. Plaint or memorandum of appeal in each of the following suits :—

- |   |                   |
|---|-------------------|
| (i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;                     | } Fifteen rupees. |
| (ii) to alter or cancel any entry in a register of the names of proprietors or revenue-paying estates;  |                   |
| (iii) to obtain a declaratory decree where no consequential relief is prayed;   | } Fifteen rupees. |
| (iv) to set aside an award;   |                   |
| (v) to set aside an adoption;   |                   |
| (vi) every other suit where it is not possible to estimate at a money value the subject-matter in dispute, and which is not otherwise provided for by this Act. |                   |

18. Applications—

- |   |             |
|---|-------------|
| (a) under paragraph 17 or 20 of the Second Schedule to the Code of Civil Procedure, 1908 (V of 1908);   | One rupee.  |
| (b) for opinion or advice or for discharge from a trust, or for appointment of new trustees under section 34, 72, 73 or 74 of the Indian Trusts Act, 1882 (II of 1882); | Ten rupees. |
| (c) for winding up of a company, under section 166 of the Indian Companies Act, 1913 (VII of 1913);   | Ten rupees. |
| (d) for the appointment or declaration of a person as guardian of the person or property or both, of minors, under the Guardians and Wards Act, 1890 (VIII of 1890).    | Two rupees. |

19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908, Order 36, Rule (1). Fifteen rupees."

6. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act but which have not been issued.

- Stamps, designs for, not submitted now to King, 940.
- Standardization, discussed at the Imperial Conference of 1926, 1243.
- Standing Committee on Empire Forestry, 1242.
- Stanhope, Rt. Hon. E., Secretary of State for the Colonies (1886-7), summons Colonial Conference of 1887, 1176.
- Stanley, Hon. Sir A. L., K.C.M.G. (now Lord Stanley of Alderley), Governor of Victoria (1914-20), refuses a dissolution to his ministry in Victoria, 169.
- Stanley, Lord, afterwards Earl of Derby, Secretary of State for the Colonies (1841-5), 16.
- Stanmore, Lord, *see* Gordon.
- Star Chamber, Act for the Abolition of the, 1077.
- Stare decisis*, principle adopted in Dominions, 1093.
- State debts in Australia, scheme of 1927 for their transfer to the Commonwealth and ultimate extinction, 1249, 1250.
- State Laws and Records Recognition Act*, 1901, Commonwealth of Australia, 672.
- State property in Australia, taken over by Commonwealth, 1250.
- State Trading Concerns Act*, 1914-16, Western Australia, 637.
- States of Australia, Part IV, chap. ii; question of appointment of Governors of, 69-73; relation of to Imperial Conference, 1200, 1215, 1230.
- Statistics, Imperial Conference resolutions in favour of improvements in collection of, 1183, 1184, 1215.
- Statistics of food stuffs in cold storage and wool consumption, discussion of, at the Imperial Conference of 1926, 1243.
- Status of aliens, 1044, 1045.
- Status of Governor-General, 152, 1187; author's suggestions as to, in 1915, vii, viii; made effective by Imperial Conference of 1926, 1225, 1226.
- Statutory regulation of precedence (usual as regards Judges, e. g. 1916, c. 31, Quebec), 1028, 1029.
- Steamship services, improved, 1244; *see* All-Red Route.
- Steel rails, importation of, by New South Wales in despite of the Commonwealth, 634, 635.
- Stephen, Hon. Sir A., C.J. of New South Wales, views of, on prerogative of mercy, 1111.
- Stephen, Sir James, Permanent Under-Secretary for the Colonies (1836-47), contemplates secession of the Dominions, 1156.
- Steyn, M. T., President of the Orange Free State, shares in passing of Union constitution, 708.
- Stocks, Dominion, when admitted as trustee, 758, 759, 768 n. 2, 770 n. 1, 1039, 1148, 1177, 1179.
- Store cattle, admission of Canadian, 1216.
- Stores for Imperial forces, exempted from duties in Australia and New Zealand, 928.
- Stout, Rt. Hon. Sir R., K.C.M.G., Prime Minister of New Zealand (1884-7), and later Chief Justice (until 1927), 270, 457, 536 n. 4.
- Strachan, Mr., moves Labour amendment to Flag Bill in South Africa, xix, 1251.
- Straits, episode of British appeal in September 1922 for Dominion aid to protect, 903, 904.
- Straits Settlements, contribution to Imperial defence, 1017.
- Stratheona, Lord, G.C.M.G., Privy Councillor and of High Commissioner for Canada (1896-1914), 283.
- Strickland, Sir Gerald, Count della Catena, G.C.M.G., Governor of Tasmania (1904-9), Western Australia (1909-12), and New South Wales (1913-17), M.P. for Lancaster (1924), and Prime Minister (1927) of Malta (contrast O'Loghlen's case, 1153: presumed possible under Act (c. 19) of 1926), 81, 106, 117, 176, 177, 230, 258.
- Strike deportations in 1914 in Union of South Africa, 200, 201.
- Strike incidents in South Africa, 199-204.
- Strikes in shipping industry in Australia, influence of, on Australian politics, 252, 253.
- Strong, Rt. Hon. Sir H., C.J. of Canada, opinions of, 311, 342.
- Subsidies to Australian States, 674, 675, App. D.
- Sudan, Gordon relief expedition, 978; Sir John Macdonald's attitude towards, xv.
- Suez Canal dues, reduction of, asked by Imperial Conference, 1184, 1192.
- Sugar industry in Queensland, exclusion of Asiatics from, 817.
- Sugar Works Guarantee Acts*, 1893-5, Queensland, 816.

7. In section 7 of the principal Act between paragraphs iv and v the following paragraph shall be added as iv-A :—

'In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.'

8. In section 7 (v) of the principal Act—

in (a) for the word 'ten' the word 'twenty' shall be substituted ;

in (b) for the word 'five' the word 'ten' shall be substituted ;

and after clause (d) the following proviso shall be substituted for the existing proviso :—

'Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887, for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph ;

9. For the second paragraph of section 11 of the principal Act the following paragraphs shall be substituted :—

'Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such enquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the claim for the excess shall be dismissed, unless the Court, for sufficient cause, extends the time for payment.

'Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accordance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.'

10. In section 18 of the principal Act, for the words 'eight annas' the words 'one rupee' shall be substituted.

11. For Schedules I and II of the principal Act, the following schedules shall be substituted :—

- 169, 170; control of expenditure, 184, 188, 190; Executive Council and Cabinet, 227; and Parliament, 278; Cabinet, 243; political parties, 254; Agent-General, 262; Civil Service, 293; legal powers of Parliament, 302 n. 3, 309; amendment of the constitution, 352, 354; privileges, 367, 368, 371, 374; Speaker and President, 380; referring back of Bills, 364; franchise for assembly, 400; members of Parliament, 407, 408; duration, 411; payment, 413; proportional representation, 417; redistribution, 423; electoral disputes, 424; Upper Chamber, 438, 439; relations of the two Houses, 487-91, 1246, 1247; reservation of Bills, 753, 754; disallowance, 759; land control, 773; Chinese, 809, 810, 811; British Indians, 814; judicial tenure, 1070; appeals to Privy Council (Order in Council, 7 Nov. 1909), 1091; prerogative of mercy, 1111, 1112, 1115, 1116, 1117; Bishop, 1126; religious endowment, 1138.
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- Taxation of incomes of State officials by Commonwealth, and vice versa**, 632, 634, 635, 638, 639.
- Taxation of mining shares on transmission by death in the Transvaal**, 767.
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- Taylor, Sir Henry**, of the Colonial Office, on independence as ultimate destiny of the Colonies, 1156.
- Taylor, Mr.**, New Zealand, insists that internal affairs are beyond scope of Imperial Conference, 1186.
- Tembuland, annexed to Cape**, 330 n. 3.
- Templeman, Hon. W.**, in British Columbia Cabinet without seat in Assembly, 229.
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- Territorial limitation on Dominion legislation**, Part III, chap. ii, and see Table of Contents; 117, 523, 604, 623, 765, 1149, 1173, 1228; possible application to grant of leave to appeal to Privy Council, 1110; suggestions of author in 1915 as to removal of, ix; requested by Canadian Parliament in 1920, ix.
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- Territorial waters, birth on foreign ship in, does not confer British nationality**, 1054; extent of, in United Kingdom and the Dominions (the Court of Appeal (43 T.L.R. 746) reversed the decision in *The Fagernes* simply on the ground that the Home Secretary asserted that no claim was made that the area there in question in the Bristol Channel was territorial waters, and that the judiciary should not in such a matter deviate from the executive government), 325, 333 n. 3.
- Territorial Waters Jurisdiction Act**, 1878, Imperial, 222, 333, 1079.
- Territories, of Canada**, 582-5; of the Commonwealth of Australia, 680-7.
- Texas, inability to maintain independent status**, 867.
- Theodore, Hon. E.**, Premier of Queensland, later M.P. of the Commonwealth of Australia, carries confiscatory laws and swamps Upper House, 72, 142, 143, 253, 388, 461, 462, 768.
- Thomas, Rt. Hon. J.**, Secretary of State for the Colonies (1924), misrepresents Canadian views on treaty issues, 906; on Irish Minister at Washington, 894 n. 2.
- Thompson, Rt. Hon. Sir John S. D.**, K.C.M.G., Minister of Justice (1885-92), Prime Minister of Canada (1892-4), 516, 956.
- Thomson, Charles Poulett**, Lord Sydenham, Governor-General of Canada (1839-41), views on responsible government, 15, 16, 17, 51.
- Thornton, Rt. Hon. Sir E.**, British Minister at Washington, 586.
- Three-mile limit of territorial waters, agreement to relax in favour of**

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number,		Proper Fee.
	in excess of twenty thousand rupees, up to thirty thousand rupees.	
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Thirty rupees.
	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
2. * <i>Plaint, or written statement pleading a set-off or counter claim, presented to a Court outside the Presidency Town in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter does not exceed Rs 500.</i>	When such amount or value exceeds five rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
3. <i>Plaint in a suit for possession under [the Specific Relief Act, 1877, section 9].</i>	...	An amount of one-half the scale of fee prescribed in article 1 above.
4. <i>Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.</i>	...	The fee leviable on the plaint of memorandum of appeal.

\* To ascertain the proper fee leviable on the institution of a suit, see the table annexed to this schedule.

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- Treaty of Peace Act*, 1919, Union of South Africa, 1058.
- Treaty of Peace Order*, 1919, Imperial, 1036.
- Treaty of Peace (Turkey) Act*, 1924, Imperial, 852 n. 3.
- Treaty of Pekin, of 24 October 1860, 809.
- Treaty of Washington of 1871 with United States, 846, 847, 863, 923; of 1888, 854, 923.
- Treaty power, desired by Dominions (contrast Sir J. Macdonald, 25 March 1870 as against Huntington's proposal, *Corr.*, p. 132), 867, 868, 1150; controlled even under Imperial Conference scheme of 1926, 1233, 1234; not normally delegated to Governor, 93.
- Treaty questions in Canada as affected by federation, 579-81.
- Treaty relations, Part V, chap. v, and see Table of Contents; principles of 1923 accepted by Canada in 1926, 1220, 1221.
- Treaty to define the Canadian boundary, 1925, 901.
- Treaty to regulate the level of the Lake of the Woods, 1925, 901.
- Trial of aliens, mode of, prescribed by Imperial legislation, 1044, 1045.
- Trollope, Anthony, advocates colonial independence, 1156.
- Trust Fund, of Commonwealth of Australia, 364.
- Trustee Act*, 1925, Imperial, legislates for Dominions, 1038.
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- Tudor, Hon. F. G., Australian Minister, resigns office in 1916, 139, 140.
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- Turner, Hon. Sir George, K.C.M.G., Prime Minister of Victoria (1894-9), 163, 252, 674.
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- Unconstitutional, sense of term, 633.
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- Uniformity of law in commercial matters within the Empire, advocated by the Imperial Conference, 1192, 1193.
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- Uniforms, rules as to, 1026.
- Union Islands (annexed to Gilbert and Ellice Islands, Order in Council, 29 Feb. 1916; disannexed under *Colonial Boundaries Act*, 1895, Order in Council, 4 Nov. 1925); placed under Governor-General of New Zealand with authority to Governor-General in Council to legislate or delegate authority, 1040 n. 1.
- Union Islands* (No. 2) *Order in Council*, 1925, s. 2, validity of, 1040 n. 1.
- Union Jack, true Imperial flag, 1031; in the case of Government Houses in

SCHEDULE I—*contd.**Ad valorem fees—contd.*

Number.		Proper Fee.
8. Copy of any document liable to stamp-duty under the Indian Stamp Act 1899, when left by any party to a suit or proceeding in place of the original withdrawn.	<p>(a) When the stamp-duty chargeable on the original does not exceed eight annas.</p> <p>(b) In any other case ...</p>	<p>The amount of the duty chargeable on the original.</p> <p>Eight annas.</p>
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a division.	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10. ( <i>Repealed by the Guardians and Wards Act, 1890 (VIII of 1890).</i> )		
11. Probate of a will or letters of administration with or without will annexed.	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed five thousand rupees.	Two per centum on such amount or value.
	where such amount or value exceeds five thousand rupees.	Three per centum on such amount or value.
	Provided that when after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant	



- Van Diemen's Land, name changed to Tasmania in 1855, *q.v.*
- van Hees, H. S., Nationalist, Union of South Africa, views of, on native question, 839.
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- Verran, Hon. John, Premier of South Australia (1910-12), 249, 280, 485.
- Veto, i.e. right to refuse assent to Bill, of Governor, opposed to Imperial disallowance of Act (cf. Dickerson, *American Colonial Government*, pp. 226 f.), 749-51, 1105.
- Vice-Admiralty Courts, in Dominions (for history of jurisdiction, cf. Beer, *British Colonial Policy*, 1754-1765, pp. 249 ff.), 1080, 1081, 1082.
- Victoria, Queen (1837-1901), views on dissolution of Parliament, 154, 155; does not desire advice as to successor to Mr. W. E. Gladstone, 157 n. 2; gives name to British Columbia, 7; to Ottawa, 18; sixtieth anniversary of Coronation as occasion of Conference of 1897, 1178.
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- Vilna, League of Nations' intervention as to, 1205.
- Violence, duty of Commonwealth to afford States protection against domestic (as to Queensland in 1912, *see* *British Australasian*, 8 Feb. 1912, p. 4), 660, 661.
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- Wales, Prince of, value of Empire tours of, 1152.
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SCHEDULE I--*contd.*TABLE OF RATES OF *ad valorem* FEES LEVIABLE.

(a) On plaint, etc., mentioned in article 1 of this schedule.

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 8	250	260	29 3
5	10	1 1	260	270	30 5
10	15	1 10	270	280	31 7
15	20	2 3	280	290	32 9
20	25	2 12	290	300	33 11
25	30	3 5	300	310	34 13
30	35	3 14	310	320	35 15
35	40	4 7	320	330	37 1
40	45	5 0	330	340	38 3
45	50	5 9	340	350	39 5
50	55	6 2	350	360	40 7
55	60	6 11	360	370	41 9
60	65	7 4	370	380	42 11
65	70	7 13	380	390	43 13
70	75	8 6	390	400	44 15
75	80	8 15	400	410	46 1
80	85	9 8	410	420	47 3
85	90	10 1	420	430	48 5
90	95	10 10	430	440	49 7
95	100	11 3	440	450	50 9
100	110	12 5	450	460	51 11
110	120	13 7	460	470	52 13
120	130	14 9	470	480	53 15
130	140	15 11	480	490	55 1
140	150	16 13	490	500	56 3
150	160	17 15	500	510	57 5
160	170	19 1	510	520	58 7
170	180	20 3	520	530	59 9
180	190	21 5	530	540	60 11
190	200	22 7	540	550	61 13
200	210	23 9	550	560	62 15
210	220	24 11	560	570	64 1
220	230	25 13	570	580	65 3
230	240	26 15	580	590	65 5
240	250	28 1	590	600	67 7

- tion, 412; payment, 413; preferential voting, 417; redistribution, 422, 423; disputed elections, 424; Upper Chamber, 436-8; relations of the two Houses, 489-91, 1247 n. 1; reservation of bills, 753, 754; disallowance, 759; land control legislation, 773, 775; aborigines, 774, 775; Chinese, 809, 810, 811; British Indians, 814, 817, 818; judicial tenure, 1069; appeal to Privy Council (Order in Council, 28 June 1909), 1091; prerogative of mercy, 1115, 1116, 1117; Bishop, 1126; religious endowment, 1138.
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- Wheat Pool scheme in Australia, operation of, requires legislative sanction, 94.
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- Williams, Sir Ralph C., K.C.M.G., Governor of Newfoundland (1909-12), asked to dismiss a minister, 134.
- Willis, Hon. H., Speaker of New South Wales Legislative Assembly, presses excessively his authority, 365.
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When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
4,800	4,900	404 15	14,500	15,000	937 7
4,900	5,000	412 7	15,000	15,500	959 15
5,000	5,250	427 7	15,500	16,000	982 7
5,250	5,500	442 7	16,000	16,500	1,004 15
5,500	5,750	457 7	16,500	17,000	1,027 7
5,750	6,000	472 7	17,000	17,500	1,049 15
6,000	6,250	487 7	17,500	18,000	1,072 7
6,250	6,500	502 7	18,000	18,500	1,094 15
6,500	6,750	517 7	18,500	19,000	1,117 7
6,750	7,000	532 7	19,000	19,500	1,139 15
7,000	7,250	547 7	19,500	20,000	1,162 7
7,250	7,500	562 7	20,000	21,000	1,192 7
7,500	7,750	577 7	21,000	22,000	1,222 7
7,750	8,000	592 7	22,000	23,000	1,252 7
8,000	8,250	607 7	23,000	24,000	1,282 7
8,250	8,500	622 7	24,000	25,000	1,312 7
8,500	8,750	637 7	25,000	26,000	1,342 7
8,750	9,000	652 7	26,000	27,000	1,372 7
9,000	9,250	667 7	27,000	28,000	1,402 7
9,250	9,500	682 7	28,000	29,000	1,432 7
9,500	9,750	697 7	29,000	30,000	1,462 7
9,750	10,000	712 7	30,000	32,000	1,492 7
10,000	10,500	734 15	32,000	34,000	1,522 7
10,500	11,000	757 7	34,000	36,000	1,552 7
1,000	11,500	779 15	36,000	38,000	1,582 7
1,500	12,000	802 7	38,000	40,000	1,612 7
2,000	12,500	824 15	40,000	42,000	1,642 7
2,500	13,000	847 7	42,000	44,000	1,672 7
3,000	13,500	869 15	44,000	46,000	1,702 7
13,500	14,000	892 7	46,000	48,000	1,732 7
14,000	14,500	914 15	48,000	50,000	1,762 7

When the amount or value of the subject-matter exceeds Rs. 50,000, for every five thousand rupees or part thereof in excess of fifty thousand rupees—thirty rupees.

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## SCHEDULE II.

*Fixed fees.*

Number.		Proper Fee.
1. Application or petition.	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject matter of such application relates exclusively to those dealings ;	One anna.
	or when presented to any officer of Land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ;	Two annas.
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ;	One anna.
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under Act No. IX of 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees ;	Two annas.
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer,	

SCHEDULE II—*contd.**Fixed fees—Contd.*

Number.		Proper fee.
	<p>which the order relates does not exceed thousand rupees.</p> <p>(b) When the value of the suit or proceeding exceeds thousand rupees.</p> <p>(ii) When presented to a High Court otherwise than under that section.</p>	<p>Ten rupees,</p> <p>Two rupees.</p>
1-A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post.	Twelve annas in addition to any fee levied on the application under clause (a), clause (b) or clause (d) of article 1 of this schedule.
2. Application for leave to sue as a pauper.	...	Eight annas.
3. Application for leave to appeal as a pauper.	(a) When presented to a District Court or a Sub-Court.	One rupee.
4. <i>Omitted.</i>	(b) When presented to a Commissioner or a High Court.	Two rupees,
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act.		Eight annas.

SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee
Procedure, 1908, and is presented.	(b) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat ...	..	Ten rupees.
13. <i>Omitted.</i>		
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866.		Five rupees.
15. [ <i>Rep. by Act V of 1908.</i> ]		
16. [ <i>Rep. by Act VI of 1889, s. 18 (1).</i> ]		
17. Plaint or memorandum of appeal in a suit—		
(i) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court.		Fifteen rupees.
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates;		
(ii) for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908,		Fifty rupees.



SCHEDULE II—*contd.**Fixed fees—contd.*

Number.		Proper Fee.
20. Every petition under the Indian Divorce Act, 186, except petitions under section 44 of the same Act, and every memorandum of appeal under section 55 of the same Act.		Twenty rupees.
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1895.		

## PUNJAB ACT VII OF 1922.

## THE COURT-FEES (PUNJAB AMENDMENT) ACT, 1922.

AS AMENDED BY PUNJAB ACTS, I AND VI OF 1926.

*An Act to amend the Court-fees Act, 1870, with reference to the scale of court-fees in the Punjab.*

Whereas it is necessary to revise the scale of court-fees provided in the Court-Fees Act, 1870, in its application to the Punjab in the manner hereinafter appearing,

It is hereby enacted as follows :—

1. (1) This Act may be called the Court-fees (Punjab Amendment) Act, 1922.

(2) It extends to the Punjab.

(3) It shall come into force on such date as the Local Government may by notification appoint in this behalf.

2. (1) The Court-fees Act, 1870, shall be amended in its application to the Punjab in the manner hereinafter provided.

(2) The sections and schedules hereinafter referred to by number mean the sections and schedules respectively so numbered in the Court-fees Act, 1870, unless it shall appear to the contrary.

3. In section 4 the word "one" shall be substituted for the word "two" between the word "of" and the word "or".

4. In section 18 between the word "of" and the word "unless" for the word "eight annas" the words "one rupee" shall be substituted.

5. For Article 1 of Schedule I the following Article shall be substituted, namely :—

Number.		Proper Fee.
1. Plaint etc,—concluded.	in excess of twenty thousand rupees up to thirty thousand rupees.	
	When such amount or value exceeds thirty thousand rupees, for every thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees.	Thirty rupees.

(2) The proviso, as to maximum, after the ninth entry in the second column of the said article in the same schedule shall be omitted.

6. Article 13 of schedule I which was repealed by the Punjab Courts (Amendment) Act, 1912, in so far as it affected the Punjab is hereby re-enacted, save that for the words "Chief Court in the Punjab," the words "High Court of Judicature at Lahore," for the figures "70" the figures "44" and for the figures "1884" the figure "1918" shall be substituted; and the words and figures "as amended by the Punjab Courts Act, 1897" shall be omitted.

7. For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of schedule I, the table set forth in the schedule to this Act shall be substituted.

8. In article 1 of schedule II—

(1) for the words "one anna" in the third column opposite clause (a) in the second column, the words "two annas" shall be substituted;

(2) for the words "eight annas" in the third column opposite (b) in the second column, the words "one rupee" shall be substituted;

(3) for clause (d), in the second column and the corresponding entry in the third column shall be substituted the following clause and entries, namely :—

## SCHEDULE.

*Table of rates of ad valorem fees leviable on the institution of suits.*  
(See Section 7.)

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
...	5	0 9	260	270	30 6
5	10	1 2	270	280	31 8
10	15	1 11	280	290	32 10
15	20	2 4	290	300	33 14
20	25	2 13	300	310	34 14
25	30	3 6	310	320	36 0
30	35	3 15	320	330	37 2
35	40	4 8	330	340	38 4
40	45	5 1	340	350	39 6
45	50	5 10	350	360	40 8
50	55	6 3	360	370	41 10
55	60	6 12	370	380	42 12
60	65	7 5	380	390	43 14
65	70	7 14	390	400	45 0
70	75	8 7	400	410	46 2
75	80	9 0	410	420	47 4
80	85	9 9	420	430	48 6
85	90	10 2	430	440	49 8
90	95	10 11	440	450	50 10
95	100	11 4	450	460	51 12
100	110	12 6	460	470	52 14
110	120	13 8	470	480	54 0
120	130	14 10	480	490	55 2
130	140	15 12	490	500	56 4
140	150	16 14	500	510	57 6
150	160	18 0	510	520	58 8
160	170	19 2	520	530	59 10
170	180	20 4	530	540	60 12
180	190	21 6	540	550	61 14
190	200	22 8	550	560	63 0
200	210	23 10	560	570	64 2
210	220	24 12	570	580	65 4
220	230	25 14	580	590	66 6
230	240	27 0	590	600	67 8
240	250	28 2	600	610	68 10
250	260	29 4	610	620	69 12

When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
5,000	5,250	427 0	19,500	20,000	1,162 8
5,250	5,500	442 8	20,000	21,000	1,192 8
5,500	5,750	457 8	21,000	22,000	1,222 8
5,750	6,000	472 8	22,000	23,000	1,252 8
6,000	6,250	487 8	23,000	24,000	1,282 8
6,250	6,500	502 8	24,000	25,000	1,312 8
6,500	6,750	517 8	25,000	26,000	1,342 8
6,750	7,000	532 8	26,000	27,000	1,372 8
7,000	7,250	547 8	27,000	28,000	1,402 8
7,250	7,500	562 8	28,000	29,000	1,432 8
7,500	7,750	577 8	29,000	30,000	1,462 8
7,750	8,000	592 8	30,000	32,000	1,492 8
8,000	8,250	607 8	32,000	34,000	1,522 8
8,250	8,500	622 8	34,000	36,000	1,552 8
8,500	8,750	637 8	36,000	38,000	1,582 8
8,750	9,000	652 8	38,000	40,000	1,612 8
9,000	9,250	667 8	40,000	42,000	1,642 8
9,250	9,500	682 8	42,000	44,000	1,672 8
9,500	9,750	697 8	44,000	46,000	1,702 8
9,750	10,000	712 8	46,000	48,000	1,732 8
10,000	10,500	735 0	48,000	50,000	1,762 8
10,500	11,000	757 8	50,000	55,000	1,792 8
11,000	11,500	780 0	55,000	60,000	1,822 8
11,500	12,000	802 8	60,000	65,000	1,852 8
12,000	12,500	825 0	65,000	70,000	1,882 8
12,500	13,000	847 8	70,000	75,000	1,912 8
13,000	13,500	870 0	75,000	80,000	1,942 8
13,500	14,000	892 8	80,000	85,000	1,972 8
14,000	14,500	915 0	85,000	90,000	2,002 8
14,500	15,000	937 8	90,000	95,000	2,032 8
15,000	15,500	960 0	95,000	1,00,000	2,062 8
15,500	16,000	982 8	1,00,000	1,05,000	2,092 8
16,000	16,500	1,005 0	1,05,000	1,10,000	2,122 8
16,500	17,000	1,027 8	1,10,000	1,15,000	2,152 8
17,000	17,500	1,050 0	1,15,000	1,20,000	2,182 8
17,500	18,000	1,072 8	1,20,000	1,25,000	2,212 8
18,000	18,500	1,095 0	1,25,000	1,30,000	2,242 8
18,500	19,000	1,117 8	1,30,000	1,35,000	2,272 8
19,000	19,500	1,140 0	1,35,000	1,40,000	2,302 8

## UNITED PROVINCES ACT III OF 1932.

### UNITED PROVINCES COURT-FEES AMENDMENT ACT 1932.

[PASSED BY THE LOCAL LEGISLATURE OF THE UNITED  
PROVINCES OF AGRA AND OUDH.]

*Received the assent of the Governor of the United Provinces of  
Agra and Oudh on 14th April, 1932 and of the Governor-General  
on 25th April 1932.*

*An Act further to amend the Court-fees Act, 1870 (VII of 1870)  
in its application to the United Provinces.*

WHEREAS it is expedient further to amend the Court-fees  
Act, 1870, in its application to the United  
Preamble. Provinces,

AND WHEREAS the previous sanction of the Governor-General has  
been obtained, under section 80-A, sub-section (3), of the Government  
of India Act (5 and 6 Geo. V, c. 61 ; 6 and 7 Geo. V, c. 37 ; 9 and 10  
Geo. V, c. 101), to the passing of this Act ;

It is hereby enacted as follows :—

Title, extent and com-  
mencement. 1. This Act may be called the United Pro-  
vinces Court-fees (Amendment) Act, 1932.

(2) It extends to the territories for the time being administered by  
the Local Government of the United Provinces.

(3) It shall come into force on the first day of May, 1932, and  
shall remain in force up till June 30, 1936 \*

Amendment of section  
6 of Act VII of 1870. 2. To section 6 of the Court-fees Act, 1870,  
hereinafter referred to as "the said Act", the  
following proviso shall be added, namely :—

"Provided that where such document relates to any suit, appeal  
or other proceeding under the Oudh Rent Act, 1886, the Agra  
Tenancy Act, 1926, or the United Provinces Land Revenue Act,  
1901, the proper fee shall be three-quarters of the fee indicated in

---

\* The word and figures June 30, 1936 have been substituted for the word and  
figures March, 1934 by Act XI of 1934.

(iii) In article 7 for the words "eight" and "one rupee" in the third column the words "twelve" and "one rupee eight annas", respectively, shall be substituted.

(iv) In article 8 for the word "eight" in the third column the word "twelve" shall be substituted.

(v) In article 11 for the entries above the proviso in the second and third columns the following shall be substituted :—

- |  |   |
|--|---|
| 1. When the amount or value of the property in respect of which the grant of Probate or Letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees ; | Two per centum on such amount or value. |
|--|---|

and

- |   |  |
|---|--|
| 2. When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees ; | Two and one-half per centum on such amount or value. |
|---|--|

and

- |   |   |
|---|---|
| 3. When such amount or value exceeds fifty thousand rupees, but does not exceed one lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees ; | Three per centum on such amount or value. |
|---|---|

and

- |   |  |
|---|--|
| 4. When such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees ; | Four per centum on such amount or value. |
|---|--|

(vi) In article 12 for the entries in the first and second columns and for the first paragraph in the third column the following shall be substituted :—

(i) In article 1 for the words "one anna", "eight annas" and "one rupee" in third column the words "two annas" "twelve annas", "one rupee and eight annas", respectively shall be substituted; and the following clauses shall be substituted for clause (d) :—

(d) (i) When presented to the Board Three rupees.  
of Revenue for revision of a judgment or order.

(ii) When presented to a High Court—

(1) Under the Indian Companies Act, Fifty rupees,  
1913 (Act VII of 1913) for winding up a company ;

and

(2) Under section 115 of the Code of Four rupees,  
Civil Procedure, 1908 (Act V of 1908),  
for revision of an order ;

(3) In any other case Three rupees.

(ii) In article 1-A for the words "twelve annas" in the third column the words "one rupee two annas" shall be substituted.

(iii) In articles 5, 6 and 7 for the word "eight" in the third column the word "twelve" shall be substituted.

(iv) In article 10 for the words "eight annas", "one rupee" and "two rupees" in the third column, the words "twelve annas", "one rupee and eight annas" and "three rupees" respectively shall be substituted.

(v) For article 11, the following shall be substituted :—

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented

(a) to any Civil Court other than a High Court or to any Revenue Court or Executive Officer other than a Commissioner of the division or Chief Controlling Revenue or Executive Authority.

Twelve annas.

(b) to a Commissioner of the division.

Two rupees.

(c) to a High Court or to a Chief Controlling Executive or Revenue Authority.

Three rupees.

## SCHEDULE A.

When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees.	Six annas.
When such amount or value exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees up to two hundred rupees.	Twelve annas.
When such amount or value exceeds two hundred rupees, for every ten rupees, or part thereof, in excess of two hundred rupees up to five hundred rupees.	One rupee.
When such amount or value exceeds five hundred rupees, for every ten rupees, or part thereof, in excess of five hundred rupees, up to one thousand rupees,	One rupee four annas.
When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Six rupees four annas.
When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees,	Twelve rupees eight annas.
When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees.	Eighteen rupees twelve annas.
When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Twenty-five rupees.
When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Twenty-five rupees.
When such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees.	Thirty-one rupees four annas.
Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be four thousand five hundred rupees.	



When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.	When the amount or value of the subject-matter exceeds—	But does not exceed—	Proper fee.
Rs.	Rs.	Rs. A.	Rs.	Rs.	Rs. A.
600	610	58 12	990	1,000	107 8
610	620	60 0	1,000	1,100	113 12
620	630	61 4	1,100	1,200	120 0
630	640	62 8	1,200	1,300	126 4
640	650	63 12	1,300	1,400	132 8
650	660	65 0	1,400	1,500	138 12
660	670	66 4	1,500	1,600	145 0
670	680	67 8	1,600	1,700	151 4
680	690	68 12	1,700	1,800	157 8
690	700	70 0	1,800	1,900	163 12
700	710	71 4	1,900	2,000	170 0
710	720	72 8	2,000	2,100	176 4
720	730	73 12	2,100	2,200	182 8
730	740	75 0	2,200	2,300	188 12
740	750	76 4	2,300	2,400	195 0
750	760	77 8	2,400	2,500	201 4
760	770	78 12	2,500	2,600	207 8
770	780	80 0	2,600	2,700	213 12
780	790	81 4	2,700	2,800	220 0
790	800	82 8	2,800	2,900	226 4
800	810	83 12	2,900	3,000	232 8
810	820	85 0	3,000	3,100	238 12
820	830	86 4	3,100	3,200	245 0
830	840	87 8	3,200	3,300	251 4
840	850	88 12	3,300	3,400	257 8
850	860	90 0	3,400	3,500	263 12
860	870	91 4	3,500	3,600	270 0
870	880	92 8	3,600	3,700	276 4
880	890	93 12	3,700	3,800	282 8
890	900	95 0	3,800	3,900	288 12
900	910	96 4	3,900	4,000	295 0
910	920	97 8	4,000	4,100	301 4
920	930	98 12	4,100	4,200	307 8
930	940	100 0	4,200	4,300	313 12
940	950	101 4	4,300	4,400	320 0
950	960	102 8	4,400	4,500	326 4
960	970	103 12	4,500	4,600	332 8
970	980	105 0	4,600	4,700	338 12
980	990	106 4	4,700	4,800	345 0

## UNITED PROVINCES ACT VII OF 1933.

Whereas it is expedient to amend the Court-Fees Act, 1870 in its application to the United Provinces for the purpose herein after appearing, it is hereby enacted as follows :

1. (1) This Act may be called the United Provinces Court-fees (Amendment) Act, 1933.

(2) It extends to the territories for the time being administered by the Local Government of the United Provinces.

2. In Schedule II to the Court-Fees Act, 1870, the following Article shall be added after article 21 :

22, Election petition.	(a) A petition presented to the Commissioner of a division or to the Collector of a district (or to some other person or tribunal specially appointed by rule in this behalf) under sub-section (2) of the section 22 of the United Provinces Municipalities Act (Act II of 1916) questioning the election of any person as a member of a Municipal Board.	One hundred rupees.
	(b) A petition presented to a District Judge (or to some other person or tribunal specially appointed by rule in this behalf) or to a Munsiff under sub-section (2) of section 18 of the District Boards Act (Act X of 1922) questioning the election of any person as a member of a District Board.	One hundred rupees.

than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

<sup>1</sup> (5) to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the <sup>2</sup> Specific Relief Act, I of 1877, shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article 1 of the First Schedule.

<sup>3</sup> (6) to direct that the fee chargeable on appeals from orders under clause (c) of section 244 of the <sup>4</sup> Code of Civil Procedure (Act XIV of 1882) shall be limited to the amounts chargeable under article 11 of the Second Schedule;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of justice or received by any public officer;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount:

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(11) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

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1 Clause (5) is superseded by the amendment made in article 2 of Schedule I of the Court-fees Act, 1870, by the Repealing and Amending Act, 1891 (12 of 1891), Sch. II.

2 Genl. Acts, Vol. II.

3 Clause 6, as it now stands, forms the subject of a separate notification, and is inserted here in this form for convenience of reference. See Notification No. 4344 S R., dated 6th October, 1893, Gazette of India, 1893, Pt. I, p. 575.

4 See now Act 5 of 1908 Genl. Acts Vol VI

Pleader or other persons specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings;

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;

(16) to direct that the fee chargeable—

(a) on an application to a Collector, or to any officer or person discharging all or any of the functions of a Collector, with respect either to liability to assessment or to the amount of an assessment under Act II of 1886 (*an Act for imposing a tax on income derived from sources other than agriculture*), and

(b) on a copy of an order passed under section 26 of the same Act, shall be limited to one anna;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;

<sup>1</sup>(19a) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;

<sup>2</sup>(19b) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

<sup>1</sup> Clause (19a) was inserted by Notification No. 4276-S. R., dated 23rd September, 1897, see Gazette of India, 1897, Pt. I, p. 864.

<sup>2</sup> Clause (19b) forms the subject of a separate Notification (No. 3389-S. R., dated 6th August, 1896, see Gazette of India, 1896, Pt. I, p. 604), and is inserted here in this form for convenience of reference.

subject to Military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, VIII of 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before the death while on active service in the present war, namely :—

- (a) where the amount or the value of the property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1899, or in the certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 5,000, to remit the whole of the fees leviable in respect of the property,
- (b) where the said amount or value exceeds Rs. 5,000 to remit the whole of the said fees in respect of the first Rs. 5,000 and
- (c) where any property passes more than once in consequence of such deaths, to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property. No. 120 F., dated 14-1-1915, Gazette of India, 6-1-1915, Part I, pp. 160, 161.

(19f) to remit in the whole of British India the fees chargeable under article 1 (a) and (b) of Schedule II of the Act on applications for mutation of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or disease contracted within 12 months, before death, while on active service in the present war. No. 371F., dated 25-2-1915, Gazette of India, dated 27-9-1915. Part I, p. 350.

(19k) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein. No. 134F., dated 27-9-1916, Gazette of India, dated 30-9-1916, Part I, p. 1461.

*B.—Special for the Presidency of Fort St. George only.*

(20) to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely :—

1 Clause (20) was substituted for the original clause by Notification No. 3449-S. R., dated the 6th August, 1897, Gazette of India, 1897, Pt. I, p. 696.

accounts in respect of ryotwari holdings in the Madras Presidency. No. 874 F., dated 29-8-1913, Gazette of India, dated 29-8-1913, Part I, p. 826.

*C.—Special for the Bombay Presidency.*

*D.—Special for Bengal.*

*E.—Special for Agra.*

*F.—Special for United Provinces.*

<sup>1</sup> *F.—Special for N. W. F. Province.*

See SEPARATE NOTIFICATIONS *infra*.

*G.—Special for the Punjab only.*

(42) to remit the fees chargeable on copies of orders or proceedings under section 47 of the <sup>2</sup> Punjab Land Revenue Act, XVII of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record of rights under a notification <sup>3</sup> published in accordance with section 32 of the said Act :

Provided that the copy if furnished for the purpose of being filed with an application or petition to a Collector or other Revenue officer engaged as aforesaid in revising a record-of-rights, or to the Commissioner of the Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, is presented previous to the final confirmation of such revision ;

(43) to remit the fees chargeable on applications under section 97, of the <sup>2</sup> Punjab Land Revenue Act, XVII of 1887, made by village-officers in accordance with the provisions of rule 83 of the rules under that Act published with the <sup>4</sup> Notification of the Punjab Government, No. 76, dated the 1st March, 1888 ;

<sup>5</sup>(43a) to remit in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints and suits brought against British subjects by Bhuttanis ordinarily residing outside British India :—

- (i) for the recovery of debts ;
- (ii) appertaining to the custody of a woman ; or
- (iii) appertaining to inheritance ;

<sup>1</sup> See Notification No. 3844-S. R., dated 26th June, 1903, Gazette of India, 1903, Pt. I, p. 538.

<sup>2</sup> Punjab and N. W. Code.

<sup>3</sup> See Notification No. 5481-S. R., dated the 15th October, 1902, Gazette of India, 1902, Pt. I, p. 753.

<sup>4</sup> See Punjab Gazette, 1888, Pt. I, pp. 279 and 301.

<sup>5</sup> See Notification No. 2807 S. R., dated 26th June, 1896. Gazette of India, 1896, Pt. I, p. 604.

*Assessment of the Pandhari-tax in certain part of the Central Provinces*) shall, whatever may be the amount of the assessment to which the petition relates, be limited to one anna;

<sup>1</sup>(47a) to remit the fees chargeable on applications presented to Courts in the Central Provinces with reference to sections 257-A and 258 of the Code of Civil Procedure (Act XIV of 1882) in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government;

*K.—Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmer and Coorg.*

<sup>2</sup>(48) to direct that whenever, upon payment of the full fee, a certificate of administration has been granted under <sup>3</sup> Act XL of 1858 (*An Act for making better provision for the care of the persons and property of Minors in the Presidency of Fort William in Bengal*) or <sup>3</sup> Act XX of 1864 (*An Act for making better provision for the care of the person and property of Minors in the Presidency of Bombay*), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted.

#### BRITISH BELUCHISTAN.

The Governor-General of India in Council has been pleased to extend the remissions and reductions specified in rules 1 to 19. (b) set out above to British Beluchistan by Notification No. 3633 I. B. of the Government of India, dated 22nd November 1913, and published in the Gazette of India dated the 22nd November 1913, Part I, pages 1109 to 1112.

#### B—BENGAL.

Revised Notification under section 35 of the Court-fees Act, by the Government of BENGAL.

*No. 1872 J.—The 23rd May 1921.*—Under section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the First and Second Schedules of the Court-fees Act, 1870 (VII

<sup>1</sup> See Notification (No. 4064-S. R., dated the 25th July, 1902), Gazette of India, Pt. I, p. 550.

<sup>2</sup> Clause (48) is obsolete.

<sup>3</sup> The Minors Act (40 of 1858) and the Minors (Bombay) Act (20 of 1864) were repealed by the Guardians and Wards Act, 1890 (8 of 1890), Genl. Acts Vol. IV.

(8) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or offices for the private use of persons applying for them :

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(9) to remit the fees chargeable, under paragraph 5 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount :

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the applications ;

(10) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(11) to remit the fee chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) :

(12) to remit the fees chargeable on an application made by a person to the Collector under 'sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer ;

(13) to remit the fees chargeable on the following documents, namely :—

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, a copy of the heads of the Judge's charge to jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,



(17) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;

(18) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(19) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(20) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13, *supra* ;

(21) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register kept in the United Kingdom in accordance with the provisions of sections 41 and 42 of the said Act, VII of 1913, and that such member was at the date of his decease domiciled elsewhere than in India ;

(22) to remit the fees chargeable on applications presented to officers of land-revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(23) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(24) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules ;

(25) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes ;

(26) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war :—

(34) to remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter 10 of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under section 103-A, sub-section (1), of the said Act;

(35) to remit the fees chargeable on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such records-of-rights under section 103-A (2) of the Act;

(36) to remit the fees chargeable on applications for mutation of names in all Government estates;

(37) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader appointed by the court to defend a pauper accused of murder;

(38) to reduce the fees chargeable under clause (iii) of Article 17 of Schedule II of the Act as amended by the Bengal Court-fees Amendment Act, 1922 on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under article 1 of Schedule I of the Act, in cases where the amount of such fee would be less than Rs. 20 (altered by No. 3789 L. R. dated 3rd April 1922—*Vide* Calcutta Gazette, 5th April 1922, Pt. I, p. 689);

(39) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885);

(40) to remit in the Presidency of Bengal the fee leviable under item 1 of the second Schedule to the said Act in the matter of applications made to customs officers by all consular officers for the free entry of goods in pursuance of their official functions;

(41) to remit in the Presidency of Bengal the fees mentioned in the first Schedule to the said Act chargeable in respect of copies of documents required by public officers for filing before Civil Court in suits in which the Government is a party.

(42) to remit the fee chargeable under the Court Fees Act, on applications of sole landlords or their agents or of common agents of joint landlords for payment of the transfer fee, as defined in Rule 24 of the rules under the Bengal Tenancy Act, 1885 (VIII of 1885) published under Notification No. 5462-L. R. dated the 26th March, 1929 at pages 549-592, Part I of the Calcutta Gazette of 28th idem, which is payable to them in accordance with the provisions of that Act. (15-11-30).

(43) to remit the fee on applications under item 1 of the second schedule made to customs officers by the consular officers for the free entry of goods in pursuance of their official function.

Revenue Courts or offices for the private use of persons applying for them :

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in case in which the deposits does not exceed Rs. 25 in amount ; Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land ;

(10) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(12) to remit the fee chargeable on an application made for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885.

(13) to remit the fees chargeable on the following documents, namely :

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1893 (V of 1898), or of a translation thereof when the copy is given to an accused person,

(b) copy of the evidence of supplementary witness after commitment when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(d) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(e) copy of an order of maintenance when the copy is given under section 90 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order

equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(23) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules ;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun powder, other explosives or detonators required *bona fide* for blasting purposes ;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911), who was killed or died of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the war terminating on the 31st of August 1921 :—

(a) where the amount of or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property,

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(26) to remit the fees leviable under articles 11, 12 and 12 (a) of the First Schedule of the said Act, on the property of—

(i) any person subject to the Naval Discipline Act (29 and 30 Vict., C. 109), the Army Act (44 and 46 Vict., C. 58), the Air Force Act (7 and 8 Geo. 5, C. 51) or the Indian Army Act, 1911 (VIII of 1911), who is killed or dies from wounds inflicted, accidents occurring or diseases contracted while on active service or on service which is of a warlike nature or involves the same risk as active service, and

(ii) any person being a Government servant, civil or military, who dies from wounds inflicted while in actual performance of his official duties in consequence of those duties,

(a) where the amount or value of property, in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under Part X of the Indian Succession Act, 1925, or in the certificate in the Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property,

- (iii) in the case of the documents referred to in clause (c) before the publication of the draft under clause 5 of section 111 of the said Act;

(33) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908);

(34) to reduce the fees chargeable under clause (iii) of Article 17 of Schedule II of Act on plaints relating to suits instituted in the Chota Nagpur Division under sections 87 (1), 111 (8), 120 (read with section 87), 130 (1) and 252 (1) of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) to the amount of an *ad valorem* fee in cases where the amount of such fee would be less than 15 rupees;

(35) to remit the fees chargeable—

(a) on certified copies of entries in record-of-rights furnished, in accordance with any rules for the time being in force, under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), after the final publication of such record-of-rights under section 116 (2) of that Act,

(b) on any application for the deposit of rent in respect of which a fee is paid under section 70 (2) of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913).

(c) on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter XI of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913): provided that such applications or petitions are presented before the publication of such draft record under section 116 (1) of the said Act;

(36) to reduce the fees chargeable under clause (iii) of article 17 of Schedule II of the Act on plaints relating to suits instituted under section 130 of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), to the amount of an *ad valorem* fee chargeable under article 1, Schedule I of the Act in cases where the amount of such fee would be less than Rs. 15;

(37) to reduce to the sum of eight annas the fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913):

(38) to declare that the proper fee to be charged upon an application to deposit in any Court, rent not exceeding the sum of fifteen rupees, shall be as follows:

	Proper fee.
If the amount deposited exceeds Rs. 2-8-0, ... ..	One anna.
If the amount deposited exceeds Rs. 2-8-0 but does not exceed Rs. 5...	Two annas.
If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10...	Four annas.
If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15.	Six annas.

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule

## D—BOMBAY.

The Government of Bombay Notification No. 590, dated 16th September 1921, published in the Bombay Government Gazette, dated 22nd September 1921.

*Secretariat, Fort, Bombay, 16th September 1921.*

No. 590. — In exercise of the powers conferred by section 35 of the Court-fees Act, 1870 (VII of 1870 as amended by Act XXXVIII of 1920, and in supersession of so much of all previous notifications under that section issued by the Governor-General in Council as relates to the reduction or remission of all or any of the fees mentioned in the First and Second Schedule to the said Act, in the territories under the administration of the Government of Bombay, the Governor in Council is pleased to make the following reductions and remissions of the fees mentioned in the First and Second Schedules to the said Act, namely:—

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use:

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(a) copies of village settlement records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in Settlement Courts;

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or office;

- (a) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,
  - (e) copy of an order of maintenance, when the copy is given under Section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.
  - (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,
  - (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
  - (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any Criminal proceeding,
  - (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties;
- (13) to remit the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918);
- (14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office;
- (15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter in a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;
- (16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification;
- (17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp;
- (18) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the "present" war;

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act 1884 (XII of 1884);

(28) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein :

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(30) to remit the fees chargeable under the Second Schedule on agreements required by Rules 37, 43 and 52 of the Land Revenue Code Rules, 1921;

(31) to reduce to a uniform rate of four annas per copy the fee chargeable under article 7 of the First Schedule on copies of decrees or orders having the force of a decree issued by Mamlatdars under the Mamlatdras Courts Act, 1906 (Bom. II of 1906);

(32) to remit the fees chargeable under article 1 of the Second Schedule on all applications made to a Collector or other Revenue Officer, or to the Chief Controlling Revenue Authority, by any of the under-mentioned political pensioners, being the eldest sons or representatives of the ex-Amirs of Sindh and Sardars of note:—

District.	Number and Names of Pensioners.
Hyderabad.	(1) His Highness Mir Nur Muhammad Khan, son of Mir Hussain Ali Khan, Talpur.
Thar Parkar.	(2) His Highness Mir Fatoh Khan, son of Mir Sher Mahomed Khan, Talpur.
Sukkur.	(3) Mir Fazl Hussain Khan, son of Mir Sohrab Khan, Talpur.

(33) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of suits instituted before village-munsifs under Chapter V of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879);



II. No fee shall be chargeable in respect of the following applications :—

*A.—General.*

1. Applications requesting that an enclosed petition may be forwarded to the person to whom it is addressed.
2. Applications made on behalf of Government by a Government officer or servant.
3. Applications for the return of documents filed in any Court or public office.
4. Applications for copies of documents in respect of which copies no court-fee is chargeable.
5. Applications for repayment of deposits or payment of any sum the payment of which has been duly sanctioned by competent authority.
6. Applications for rectification in errors of assessment.
7. Applications for the advice or assistance of the Agricultural Department.
8. (1) A claim preferred to the revising authority by a person whose name is not entered on the electoral roll for the Council of State, or the Indian Legislative Assembly or the Local Legislative Council and who claims to have it inserted therein.  
(2) An objection preferred to such authority by any person whose name is on the roll and who objects to the inclusion of his own name or of the name of any other person on this roll.

*B.—Specific Enactments.*

1. *Arms Act.*—Applications for the grant or renewal of arms licences or otherwise relating to such licences.
2. *Explosives Act.*—Applications for licences to possess gun-powder, other explosives or detonaters required *bona fide* for blasing purposes.
3. *Government Loans Enactments.*—Applications for the grant, suspension or remission of loans under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884.
4. *Income-tax Act.*—Applications with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax.
5. *Land Revenue Enactments*—
  - (a) Applications for permission to occupy Government land for purposes of cultivation.
  - (b) Applications for the suspension or remission of land revenue on the ground that a crop has not been sown or has failed.

case in another form against the same defendant, the value of the stamp on the plaint shall be refunded on its presentation to the Collector of the district with a certificate from the Judge or Officer who rejected it that it was rejected in the circumstances above described and that in his opinion the value of the stamp should be refunded.

- (b) The value of the subject-matter of a suit for the possession of or to enforce a right of pre-emption in a fractional share of a holding assessed separately to land revenue shall, for the purpose of computing the amount of the fees chargeable in the suit, be deemed not to exceed five times such portion of the revenue assessed on the holding as may be payable rateably in respect of the share.

#### VI. *Probates and Letters of Administration.*

- (a) No fee shall be chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates in the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913, provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900, and that such member was at the date of his decease domiciled elsewhere than in India.
- (b) The fee chargeable under Articles 11, 12 and 12A of the first Schedule on the property of—
- (i) any person subject to the Naval Discipline Act (29 and 30 Vict., C, 109), the Army Act (7 and 8 Geo. 5, C, 51), or the Indian Army Act, 1911 VII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service, or dies from wounds inflicted accidents occurring or disease contracted while on such service and
- (ii) any person being a Government servant, Civil or Military, who dies from wounds or injuries intentionally inflicted while in actual performance of his official duties or in consequence of those duties, shall be remitted to the following extent:—

(1) where the amount or value of property in respect of which the grant of probate or letters of administration is made, or which is specified in the certificate under [Part X of the Indian Succession Act, 1925] does not exceed Rs. 50,000 the whole of the fees leviable in respect of that property;

(2) when the said amount or value exceeds Rs. 50,000, the whole of the said fees in respect of the first Rs. 50,000,

VII. No fee shall be chargeable in respect of any bond prescribed by the Criminal Procedure Code.

#### F—CENTRAL PROVINCES.

List of reductions and remissions authorised by the Governor in Council under section 35 of the Court-fees Act, 1870.

No. 79-292-XI.—In exercise of the powers conferred by section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under the said section, the Governor in Council is pleased to make the following reductions and remissions in the fees chargeable under the First and Second Schedules of the Act, namely:—

petition to the Government of India and contains merely a request that the petition may be forwarded to the Government of India ;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Officers for the private use of persons applying for them ;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(11) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land ;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(13) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(14) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration officer ;

(15) to remit the fees chargeable on the following documents, namely :—

- (a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898) or of a translation thereof, when the copy is given to an accused person.
- (b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person.
- (c) copy or translation of a judgment in a case other than a summons case and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person.
- (d) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail.

(23) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers), Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India ;

(24) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(25) to remit the fee chargeable on applications and petitions presented to a Collector or any revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(26) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the India Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules ;

(27) to remit the fees chargeable on applications to the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Explosives Rules 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes ;

(28) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict. C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed while on active service or on service which is of a warlike nature or involves the same risk as active service or dies from wounds inflicted, accident occurring or diseases contracted while on such service :—

(a) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1899 (VII of 1899), does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property ;

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(29) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911), who is killed, or dies of wounds

longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use :

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government ;

(3) (a) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded ;

<sup>1</sup> (b) to remit the fees now chargeable under article 1 (d) (ii) of Schedule II of Madras Court-fees (Amendment) Act, 1922 (V of 1922), on applications or petitions presented to the High Court for refund of court-fees paid under a mistake or by misdirection.

(4) to remit the fees chargeable on

(a) copies of village settlement records furnished to land holders and cultivators during the currency or at the termination of settlement operations ;

(b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in settlement courts :

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records (other than lists of fields) extracted as aforesaid, which may be filed in any court or office ;

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ;

(7) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts of

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<sup>1</sup> Notification No. 34 Law (General), dated 5-1-1927. (Fort St. George Gazette, Pt. I, p. 110.)

- (f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.
- (g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,
- (h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,
- (i) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;
- (13) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income tax ;
- (14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;<sup>1</sup>
- (15) to direct that when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional

<sup>1</sup> O. 13, R. 9, C. P. C. provides that a person who has produced a document *shall be entitled to receive* back the same after the disposal of the suit and appeal while the proviso to the rule enacts that a document *may* be returned earlier on production of a certified copy and on undertaking to produce the original when required. In the former case, the return of document is only a ministerial act of a routine nature while in the latter case, it is a judicial act, the order having to be made by court on a verified petition setting out all facts, after notice to the other side, with all the formalities of a judicial order and with the power to make provision for costs incidental to the application (Vide sub-rule 3 Mad.). The revision notification was probably intended to be applicable only to applications for return of documents in the former case but the language of the rule is wide so as to cover all applications for return of documents. In view of this wide language of the rule, it is doubtful whether the present practice of charging court-fee on applications for return of documents during the pendency of the suit or appeal is correct.

<sup>1</sup>(d) to remit the fee payable under article 10 of Schedule II by Advocates on memorandum of appearance filed by them when appearing for the accused in Criminal cases,

<sup>2</sup>(e) to reduce to Rs 15 the fees chargeable under Schedule II on a memorandum of second appeal in a suit of the class mentioned in article 17-B or instituted in a revenue Court, and

<sup>3</sup>(f) to remit the fee chargeable under article 10 of Schedule II of the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of a vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party, when presented to any Criminal Court for the conduct of any prosecution on behalf of a Municipal Council to which the Madras District Municipalities Act, 1920 (Madras Act V of 1920) applies or on behalf of the Corporation of Madras or a Local Board to which the Madras Local Boards Act, 1920 (Madras Act XIV of 1920) applies;

(24) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes;

(25) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884);

(26) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon for the purpose of use therein;

(27) to remit the fees chargeable on copies of decrees of civil or revenue courts situate in the territories of His Highness the Gaekwar of Boarda forwarded to any court in the Presidency of Fort St. George for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908);

(28) to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely :—

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1 Added by Notification No 20 Law (General), dated 23-3-1925. Fort St. George Gazette, Part I, p. 596.

2 Inserted by Notification No. 296 Law (General), dated 15-4-1926. Fort St. George Gazette, Part I, p. 786.

3 Added by Notification No. 67 Law (General), dated 25-1-1927. Fort St. George Gazette, Part I, p. 210.

ed by village <sup>1</sup> courts and plaints and complaints filed and information laid in Panchayat Courts constituted under the Madras Village Courts Act, 1889 (Madras Act I of 1889), as amended by Madras Act II of 1920 ;

(37) to remit the fees chargeable on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency ;

(38) to remit the fees chargeable on applications, for transfer of registry in the land records of house-sites in towns in the Madras Presidency ;

(39) to reduce the fee now chargeable under article 1 of Schedule I of the Madras Court Fees (Amendment) Act, 1922 (V of 1922), in respect of a plaint, or written statement pleading a set off or counter-claim presented to a Court outside the Presidency Town in any suit filed as a small cause suit, when the amount or value of the subject-matter exceeds Rs. 500, but does not exceed Rs. 1,000 to twelve annas for every ten rupees or part thereof of such amount or value : Provided that the full fee shall become payable if, for any reason, the suit cannot be tried as a small cause suit ;

<sup>2</sup>(40) to remit the fees chargeable under article 1 of Schedule II of the Court-Fees Act, 1870 (VII of 1870) as amended by the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922) in respect of applications to which the first paragraph of the said article applies made by consular officers in pursuance of their official functions to officers of the Customs Department.

<sup>3</sup>(41) to remit the fee chargeable—

(a) under article 1 (a) of the Schedule II, in respect of any application by a Government servant for the copy of any order of punishment imposed on him, where there is a statutory right of appeal from such order ; and

(b) under article 11 of the same schedule, in respect of a memorandum of appeal preferred by a Government servant in pursuance of a statutory right of appeal, against any order of punishment imposed on him ;

<sup>4</sup>(42) to remit the fee chargeable under article 1 (b) of Schedule II to the Court-Fees Act, 1870 (VII of 1870), as amended by the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922), in respect of applications in writing to which the said article applies, made under sub-section (2) of section 4 of the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act I of 1917).

<sup>1</sup> Amended and added by Notification Nos. 61 Law (General), dated 5-1-1922 and 421 Law General, dated 17-7-1923 published in the Fort St. George Gazette, Part I, pp. 98 and 99 and p. 761 respectively.

<sup>2</sup> Notification No. 809 Law (General), dated 22-10-1928, Fort St. George Gazette, Part I, p. 1702-G. O. No. 3537 Law (General), dated 22-10-1928.

<sup>3</sup> No. 41 was added by G. O. No. 3634 Law (General), dated 4-10-1932,

<sup>5</sup> No. 42 was added by G. O. No. 2622, Law (General) dated 14-9-1934.



- (b) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000.

### NOTIFICATION.

(5th September 1932.)

<sup>1</sup> Under section 35 of the Court-Fees Act, 1870 (VII of 1870) as amended by the Devolution Act, 1920 (XXXVIII of 1920), and the Madras Court-Fees (Amendment) Act, 1922 (Madras Act V of 1922), the Governor in Council is hereby pleased to reduce to fifteen rupees the fees mentioned in Articles 17-A and 17-B of Schedule II to the first-mentioned Act as so amended, in respect of—

- (i) a plaint in any suit the value whereof for purposes of jurisdiction does not exceed three thousand rupees, which is instituted in the Court of the Subordinate Judge of Cochin; and
- (ii) a memorandum of first and second appeal in any such suit.

### H—THE PUNJAB.

The following notification issued by the Punjab Government under the Court-fees Act, reducing and remitting fees, is published for information and guidance :—

*The 21th March 1922.*

No. 10495.—Under section 35 of the Court-fees Act, 1870 as modified by the Devolution Act, 1920, and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the territories administered by the Governor of the Punjab all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor of the Punjab has been pleased to make the reductions and remissions hereinafter set forth, namely—

(1) To remit the fees chargeable on applications presented to a collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use.

(2) To remit the fees chargeable on applications in writing relating exclusively to the purchase or sale which is the property of the Government.

(3) To direct that, when a plaint declaring a reasonable case on its merits is presented to any Civil or Revenue Court in such a form at the presiding Judge or Officer without summoning the defendant objects it, not for any substantial defect but on account of an entirely

<sup>1</sup> This Notification was issued by G. O. No. 3279 Law (General) dated 1-1-1932 as amended by G. O. No. 186, Law (General) dated 18-1-1933.

(10) To remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land.

(11) To remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884).

(12) To remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884).

(13) To remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer.

(14) To remit the fees chargeable on the following documents, namely:—

- (a) Copy of the charge framed under section 210 of the Code of Criminal Procedure, 1898, or of a translation thereof, when the copy is given to an accused person.
- (b) Copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person.
- (c) Copy or translation of a judgment in a case other than a summons case and a copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person.
- (d) Copy or translation of the judgment in a summons case, when the accused person to whom the copy is given under section 371 of the said Code is in jail.
- (e) Copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.
- (f) Copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the Jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.
- (g) Copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the province.

(25) To remit the fee chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein.

(26) (a) To remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(b) To reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules;

(27) To remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gunpowder, other explosives or detonators required *bona fide* for blasting purposes.

(28) To remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58), or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the war of 1914-19 :—

(a) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under [Bombay] Regulation 8 of 1827 does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect that property;

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000; and

(c) where any property passes more than once in consequences of such death, to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(29) To remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the war of 1914-19.

(30) To remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the

(1) to direct that the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper of value not exceeding Rs. 25, which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper of not value exceeding Rs. 25 which has become spoiled or unfit for use, shall be limited to two annas;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of the entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to direct that the fees chargeable on appeals from orders determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908 (Act V of 1908) and therefore having the force of decrees, shall be subject to a maximum of—

(a) two rupees when the appeal is presented to the District Judge in a civil or revenue case or to the Commissioner of the Division in a revenue case; and

(b) five rupees when the appeal is presented to the High Court of Judicature at Allahabad or the Chief Court of Oudh in a civil or revenue case or to the Board of Revenue in a revenue case.

(5) to direct that the fees chargeable under paragraph 2 of clause (b) or under clause (d) of Article 1 of the second Schedule on applications for orders for the payment of a deposit shall be limited to two annas if the deposit does not exceed Rs. 10; to four annas if the deposit exceeds Rs. 10 but does not exceed Rs. 25; and to eight annas if the deposit exceeds Rs. 25, but does not exceed Rs. 50;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application;

(6) to remit the fees chargeable on applications for loans under the Agriculturists' Loans Act, 1884 (XII of 1884);

advising the Government in connection with any criminal proceedings,

- (2) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;
- (9) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;
- (10) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;
- (11) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;
- (12) to remit the fees chargeable on applications for copies of documents detailed in clause 8, *supra* ;
- (13) to remit the fees chargeable on applications presented to officers of land-revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;
- (14) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;
- (15) to remit as follows the fees leviable under articles 11 and 12 of the First Schedule on the property of
  - (i) any person subject to the Naval Discipline Act (29 and 30 Vict., C. 109), the Army Act (44 and 45 Vict., C. 58), the Air Force Act (Constitution) Act (7 and 8 Geo. 5, C. 51) or the Indian Army Act, 1911 (VII of 1911), who is killed or dies from wounds inflicted, accidents occurring or disease contracted while on active service or on service which is of a warlike nature or involves the same risk as active service and (ii) any person being a Government servant Civil or Military who dies from wounds inflicted
    - (a) while in actual performance of his official duties, or
    - (b) in consequence of duties ;
  - (a) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under Part X of the Indian Succession Act, 1925, does not exceed Rs. 50,000, the whole of the fees leviable in respect of that property ; and
  - (b) where the said amount or value exceeds Rs. 50,000 the whole of the said fees in respect of the first Rs. 50,000 ;

(25) to remit all fees payable upon

(i) all petitions of appeal filed by Government servants against departmental orders of punishment ; and

(ii) copies of orders against which Government servants appeal, and which they file with their petitions of appeal ;

(26) to remit fee payable under the Court Fees Act, on appeals preferred under s. 128 of the United Provinces District Boards Act, 1922 (Act No X of 1922), against an assessment or an alteration of an assessment of a tax on circumstances and property ;

(27) to remit fees payable under Schedule II of the Court Fees Act upon applications presented under s. 58 (1) of the Agra Tenancy Act, 1926 (United Provinces Act No III of 1926) ;

(28) to remit fees payable under Article 1 (a), Schedule II of the Court Fees Act, 1870, upon any application or petition presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place.

(29) to remit fees payable under the Court Fees Act, 1870, on a complaint made by an officer or a servant of a District Board in his official capacity ;

(30) to remit in the whole of the area comprised in the district of Mirzapore, except the land described in the Schedule to the Mirzapore Stone Mahal Act (Act V of 1886), the fee payable under Article I (b) of the second Schedule to the Court Fees Act, 1870, as amended by the United Provinces Court Fees (Amendment) Act, 1932, upon all applications presented to the Superintendent, Stone Mahal, Mirzapore, or, in his absence, to the treasury or sub-treasury officer at Chunar, for the grant of a license to quarry stone or for transport of stone ;

(31) to remit fees chargeable under Schedule II of the Court Fees Act, 1870 (VII of 1870), upon applications, for the grant or renewal of licenses or duplicates made by the following classes of government servants who require a license but are exempt from licence fees under Schedule VII (7) of the Indian Arms Rules, 1924, in respect of the arms noted against each :

- |   |       |                         |
|---|-------|-------------------------|
| (1) Excise Inspectors   | . . . | One revolver or pistol. |
| (2) Patwaris employed in the hill portion of the Kumaun division  | . . . | One short gun.          |
| (3) Forest rangers  | . . . | One 12 bore gun.        |
| (4) A Sub-inspector of Police who is certified by the Deputy Inspector General of Police under whom he is serving to require an automatic pistol owing to the nature of his duties. | . . . | One automatic pistol.   |

and eight annas and one rupee, which will be supplied from treasuries or sub treasuries in quantities of value not less than fifty rupees. No commission shall be allowed on the sale by a central Nazir or a Nazir of impressed paper or court-fee stamps.

No record of sales of impressed paper need to kept; but a day-book showing daily receipt and sales of court-fee stamps must be kept in the form prescribed by rule 43.

2. The fees exhibited in the following table shall be charge on serving and executing the several processes against which they are respectively ranged :—

*Table of fees.*

**Part I.**—In the High Court, Appellate Jurisdiction.—

*Article 1.*—Notice of appeal or other notice to respondents, when he respondents are not more than four in number, *one fee*...Rs. 3 0 0

When such respondents are more than four in numbers then the fee abovementioned for the first four, and an additional fee of eight annas for every such person in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

*Article 2.*—Summons to witnesses when the witnesses are not more than four in number, *one fee* ... .. R. 3 0 0

When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such witness in excess of four.

*Article 3.*—Every warrant of arrest in respect of each person to be arrested ... .. Rs. 5 0 0

*Article 4.*—Notice, proclamation, injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four in number, *one fee* Rs. 3 0 0

When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such copy in excess of four: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

**Part II.**—<sup>1</sup> In the Courts of District Judges, Subordinate Judges, and Judges of Courts of Small Causes when exercising the powers of a Subordinate Judge conferred under section 31 of Act No. IX of 1887.—

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<sup>1</sup> NOTE.—When a District Judge, Subordinate Judge or Judge of a Court of Small Causes invested with the powers of a Subordinate Judge is exercising original jurisdiction in any suit in which the amount and value of the subject-matter does not exceed one thousand rupees, the fees chargeable will be those prescribed in Part III or Part IV as the case may be.

*Article 8.*—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908 when property is to be delivered in one town or village only, *one fee* ... .. Rs. 9 0 0

When property is to be delivered in more than one town or village, then the fees abovementioned for the first town or village specified in the warrant of delivery, and an additional fee of two rupees for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

*Article 9.*—Notice, proclamation, injunction or other order not specified in any preceding article of this Part, when the copies to be served or posted are not more than four in number *one fee* Rs. 2 8 0

When such copies are more than four in number then the fee abovementioned for the first four and an additional fee of ten annas for every such copy in excess of four; provided that the aggregate amount of the fee levied under this article shall not exceed twelve rupees eight annas.

*Article 10*<sup>1</sup>.—If the service of a process other than a warrant for the arrest of the person, be declared "emergent" as described in chapter III, rule 16 ... .. Rs. 1 4 0

### **Part III.**—(Except in suits specified in Part IV).

In the Courts of Munsifs and in Courts of Small Causes—

*Article 1.*—Summons to defendants, when the defendants are not more than four in number *one fee* ... .. Rs. 1 4 0

When the defendants are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such defendant in excess of four; provided that the aggregate amount of the fees levied under this article shall not exceed six rupees four annas.

*Article 2.*—Summons to witnesses, when the witnesses are not more than four in number, *one fee* ... .. Rs. 1 4 0

When the witnesses are more than four in number, then the fee abovementioned for the first four and an additional fee of five annas for every such witness in excess of four.

*Article 3.*—Every order of attachment ... Re. 1 0 0

*Article 4.*—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules 43, 44, 51 and 54 and section 47 of Act No. V of 1908 when the property is to be attached in one town or village only *one fee* ... Rs. 4 0 0

When property is to be attached in more than one town or village then the fee abovementioned for the first town or village

<sup>1</sup> NOTE.—This fee will be payable in addition to the ordinary fees specified in article 1, 2 or 9 of this part.



*Article 1.*—Summons to defendants, when the defendants are not more than two in number *one fee* ... Re. 0 10 0

When the defendants are more than two in number, then the fee abovementioned for the first two, and an additional fee of three annas for every such defendant in excess of two: provided that the aggregate amount of the fees levied under this article shall not exceed four rupees.

*Article 2.*—Summons to witnesses, in respect of each witness ... Re. 0 5 0

*Article 3.*—Every order of attachment ... Re. 0 10 0

*Article 4.*—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules 43, 44, 51 and 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only *one fee* ... Rs. 2 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of nine annas for every other town or village: provided that the aggregate amount of the fees levied under this article shall not exceed three rupees.

*Article 5.*—Every warrant of arrest in respect of each person to be arrested ... Rs. 1 4 0

*Article 6*<sup>1</sup>.—Every order for the sale of property—

(a) in respect of the order of sale... Re 0 10 0

(b) by way of poundage on the full amount of the purchase money—

if the sale be effected through a broker under Order XXI, rule 76 of Act No. V of 1908.	}	The commission payable to the broker and in addition a sum equal to one- quarter of such commission.
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if the sale be conducted by an officer of the Court or by any other person (not being Collector or a broker) appointed by the Court ... 6½ p. c.

*Article 7.*—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 96, 98 or 101 of Act No. V of 1908, when the property is to be delivered in one town or village only *one fee* ... Rs. 2 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery and an additional fee of eight annas for every other town or village; provided that the aggregate amount of fees levied under this article shall not exceed three rupees.

<sup>1</sup> NOTE.—The portion (a) of this fee must be paid when the process is obtained, and the poundage. (b) at the time and in the manner prescribed in rule 11, 15 or 16.

- (8) any copy of a notice of an application under Act No. VIII of 1890, sent to a Collector under chapter XX, rule 19;
- (9) any order directing an officer in charge of a jail to detain or to release a person committed to his custody.

5. No process which comes within the operation of rule 2, shall be drawn up for service or execution until the fee chargeable under that rule has been paid. The fee shall be paid in Court-fee stamps, which shall be affixed either on the application by which the Court is moved to issue the process, or, if no such application be filed, on the order by which the Court directs the issue or service of the process. If such an application be filed, it shall bear the requisite stamps for the fee in addition to such stamps, if any, as are needed for its own validity.

### B—PATNA HIGH COURT. CIVIL

Rules framed by the High Court under clause (i) of section 20 of the Court-Fees Act, 1870, declaring the fees chargeable for the service and execution of processes issued by the Civil and Revenue Courts.

1. The fees in the following tables shall be charged for serving and executing the several process against which they are respectively ranged :—

NATURE OF PROCESS.	Table of fees.			
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where, the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.	
1	2	3	4	
Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—one fee.	4 8 0	1 8 0	0 12 0	

NATURE OF PROCESS.	Table of fees.			
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.	
1	2	3	4	
<i>Article 4.</i> —For the proclamation and publication of any order of prohibition under Order XXI, Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications.	4 8 0	1 8 0	1 8 0	
<i>Article 5</i> —For the publication by posting of a copy or copies of the notification of any proceeding or process not specially mentioned in any article, irrespective of the number of such publications	3 0 0	1 8 0	1 8 0	
<i>Article 6.</i> — For executing a decree by the arrest of the person or for executing a warrant of arrest or for executing a warrant of arrest before judgment.	15 0 0	6 0 0	1 8 0	
<i>Article 7.</i> —Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—				
(a) for proclaiming the order of sale under Order XXI, rule 66 of the Code of Civil Procedure, a fee of—	3 0 0	1 8 0	1 8 0	
(b) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of—	2 per cent.	2 per cent.	2 per cent.	
together with a further fee on all excess of gross proceeds beyond Rs 1,000, at the rate of—	1 per cent.	1 per cent.	1 per cent.	
<i>Article 8.</i> —For service of any process not specified in any preceding article.	3 0 0	1 8 0	1 8 0	

(3) The percentage leviable under this article shall be calculated on multiples of Rs. 25 (*i. e.*, a poundage fee of 8 annas should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of 4 annas for every Rs. 25 or part thereof should be levied).

(4) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds should be levied, 2 per cent. being charged on the gross sale proceeds up to Rs. 1,000 and one per cent. on such proceeds exceeding Rs. 1,000.

*Note.*— Fractions of an anna will not be levied, less than six pies being ignored and six pies and over treated as one anna.

2. Notwithstanding the provisions of Rule 1 no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, a warrant of arrest, which may be issued by any Court of its own motion, solely for the purpose of taking cognizance of and punishing any act done; or words spoken, in contempt of its authority.

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall except where otherwise provided be paid by means of stamps affixed to the petition in addition to the stamps necessary for its own validity.

4. The proceeds of a sale effected in execution of any decree will only be paid out of Court on an application made for that in writing, and the poundage fee for selling the property provided in clause (b) of Article 7 must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. When a decree-holder happens to be the auction-purchaser his application for an order to set off the purchase money shall in addition to the stamp necessary for its own validity, be stamped with stamps of the value of the poundage fee due for selling the property under clause (b), Article 7.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamp attached to the petition, shall be ascertained and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree and of such costs, the decree-holder who has so purchased the property shall pay into Court 25 per cent. of the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with Order XXI, Rule 85 of the Code of Civil Procedure.

*Note (3):*—Processes issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service.

In Mauritius, the cost of service is Rs. 3 per person in town, and to this must be added 75 per cent. mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

*Note. (4):*—By arrangement between the Government of India and the Chiefs of the Feudatory States named in the Schedule below, civil processes for service or execution within the territories of those states will be issued and served in accordance with the above rule.

Processes issued by the Civil Courts within those territories of these states will be served or executed in Bihar and Orissa free of charge in accordance with the rule above.

#### SCHEDULE.

Baster	Raigarh	Korea
Nandgaon	Sarangarh	Changlulaket
Nandgaon	Udaipur	Makrat
Khairagarh	Jashpur	Chhui Khadan
Kawardha	Sirguja	Sakti

#### CRIMINAL.

1. The fees hereinafter mentioned shall be chargeable for serving and executing the processes to which the fees are respectively attached, *viz.* :—

(1) *Warrant of arrest.*—For the warrant in respect of each person named therein ... .. Rs. 1 8 0

(2) *Summons.*—For the warrant in respect of one person, or of the first two persons residing in the same place ... .. Rs. 0 12 0

In respect of every additional person named therein Rs. 0 6 0

(3) *Proclamation for absconding party under section 87 of the Criminal Procedure Code.*—For the proclamation ... .. Rs. 3 0 0

(4) *Proclamation for witness not attending (Sec. 87).*—For the proclamation ... .. Rs. 0 12 0

(5) *Warrant of attachment.*—For the warrant ... .. Rs. 1 8 0

Where it is necessary to place officers in charge of property attached, for each officer so employed, *per diem* ... .. Rs. 0 6 0

(6) *Written order.*—For the order ... .. Rs. 1 8 0

(7) *Injunction.*—For the injunction ... .. Rs. 1 8 0

*Note :—*The provisions of clauses iii and iv of section 31, Act VII of 1870, and of rules 3 and 4 below, apply also to injunctions.

I.—The fees at present levied for serving and executing processes issued by the High Court in its Appellate jurisdiction shall continue to be levied.

II.—The fees chargeable by all other Courts shall be those Civil Court's fees shown in the appended table.

III.—*Remuneration of bailiffs, peons and other persons employed by any Civil Court, other than the High Court, in the service and execution of processes.*

[Omitted]

Rules IV to VIII relating to the strength of the process staff and the standard outturn of work is omitted as this will be found in the Rules and Orders of the High Court.

IX.—The following table contains the prescribed fees chargeable in Civil Courts in respect of Processes and Proclamations :—

**Table.**

*Fees chargeable in Civil Courts in respect of processes and proclamations.*

NAME OF PROCESS.	Amount leviable in		
	Any Court of Small Causes and any Subordinate Judge's Court in a suit in which no second appeal lies as provided in Section 586 of the Code of Civil Procedure.	District Court and Subordinate Judge's Court in cases not provided in the preceding column.	Mamlatdar's Court.
	Rs. A. P.	Rs. A. P.	R. A. P.
I.—For each summons or notice—			
(a) to a single defendant respondent, or witness...	0 4 0	1 0 0	0 3 0
(b) to every additional defendant, respondent or witness, residing in the same village, if the process be applied for at the same time ...	0 2 0	0 8 0	0 2 0
II.—For every warrant—			
(a) of arrest in respect of every person to be arrested ...	0 8 0	2 0 0	...
(b) of attachment in such warrant ...			
(c) of sale in respect of every such warrant ...			
III.—For proclamation, injunction or order and every process not otherwise provided for ...	0 8 0	2 0 0	...

*Note XI.*—Nothing contained in these rules (or in any rules heretofore made by the High Court under Section 20 of the Court-fees Act VII of 1870) shall apply to process issued by a Village Munsif under Chapter V of the said Act (XVII of 1870).

*Note XII.*—*Salary of bailiffs, etc., required from party.*—

- (a) When the services of one or more bailiffs or peons are required for a longer period than three days, the party on whose application the process was issued shall, in addition to the fee leviable under the above rules, be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.
- (b) The time occupied in going and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.
- (c) If the amount payable on account of salary under the above rule shall involve a fractional part of an anna, such part shall be remitted.

*Note XIII.*—For the purpose of these rules the Courts of the Agents or Sardars shall be treated as District Courts and all other Civil Courts not specially mentioned, as Subordinate Judge's Courts.

118. *No Court-fee leviable on certificates of decree holders under section 258, C. P. C.* No Court fee is leviable upon a certificate of a decree-holder under Section 258 of the Civil Procedure Code,<sup>1</sup> although such certificate declares that the judgment-creditor has received a smaller sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree.

119. Any copy which on its first presentation has been duly stamped, and of which the stamp has been cancelled, may, if otherwise admissible, be used in the same or any other proceeding without a fresh stamp.

120. *Court-fees when to be paid and how.*—Before any process is issued in any Court the proper officer of the Court should calculate the amount to be paid as Court-fees, and should give information of such amount to the person by whom the fees are payable. Such fees should be paid before the end of the fourth day after the day on which such information is given. The Court may, for sufficient reason, extend the time for payment.

The stamps received for Court-fees should be affixed to the application upon which the process is to be issued.

*Process to be prepared after receipt of fees.*—After the fees have been received but not before, the necessary summons, notice, warrant or other process should be prepared.

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1. See now Act V of 1908, First Sch., O. XXI, R. 2.

Causes at Bombay, for service within the limits of the town of Bombay, shall be duly served by the Civil Courts concerned or the Court of Small Causes at Bombay, as the case may be, as if such processes had been originally issued by those Courts and returned direct to the Courts issuing them.

127. *Process to Nizam's Courts.*—Processes issued by any Civil Courts in British territory for service on persons residing in His Highness the Nizam's dominions shall be sent direct to the District Civil Courts<sup>1</sup> in those dominions having jurisdiction at the places where such persons reside, provided that processes for service in the City of Hyderabad and the suburbs shall be sent to the City Civil Court there.

Processes for service on persons residing in Paigah and Jagir ilakas should be forwarded to District Court of His Highness' Government in the jurisdiction of which the Paigah and Jagir is situated and not direct to the Paigah or Jagir authorities. In such cases it should be ascertained from the parties concerned whether the person to be summoned resides in a Jagir or Paigah village, and, if so, the name of the District Court within the jurisdiction of which that village is situated.—H. C., Sup. Civ. Cir. No. 15; B. G. G., 1904, Pt. I, p. 1742.

128. Where the processes for service in His Highness' dominions are issued for the appearance as a witness of any person residing there, the amount of batta and travelling allowances to which the witness is entitled shall be remitted, with the process, by Money Order.—B. G. G., 1899, Pt. I, p. 1161.

129. Processes sent by Courts for service from British India to His Highness the Nizam's dominions and *vice versa* will, after service, be conveyed back to the Courts of issue, whether British or Hyderabad, at single rates of postage.—B. G. G., 1901, Pt. I, p. 1432.

It is notified that general orders have been circulated by the Director General of the Post Office of India that duly franked official correspondence on the service of His Highness the Nizam will be delivered free.—B. G. G., 1901, Pt. I, p. 1141.

130. Courts in British territory should send direct to the Courts of Districts concerned all summonses or commissions intended for service or execution within the limits of the territories of Mysore, and should fix such dates for their return, as will admit of their service or execution within the appointed time.—B. G. G., 1900, Pt. I, p. 2488.

*The Mysore Darbar.*—Judicial notices, summonses and like judicial papers and notices in Revenue Appeals before the Mysore Darbar will be transmitted to the British authorities in India direct and not through the Resident.—H. C. Sup. Civ. Cir., No. 33; B. G. G., 1906, Pt. I, p. 403.

<sup>1</sup> For the designation of the Judges of District Courts and the names of the Districts in His Highness' dominions see B. G. G., 1889, Pt. I, p. 1161.



When the name of the district where the summonsee resides is not known to the Court of issue, the summons may be forwarded to the "Indore Residency Vakil, Indore" for transmission to its destination. Criminal summonses and miscellaneous process for the recovery of money should be forwarded as heretofore to the Resident. Processes issued by the courts in Indore will be sent by the Courts direct and not through the Resident. The execution of a decree of Civil Court in British India can only be obtained in the Indore Territory by the decree-holder suing upon it in the Indore Courts.—B. G. Letter (J. D.), No. 997, 20th Feb. 1906; B. G. G., 1906, Pt. I, p. 403; H. C. Sup. Civ. Cir., No. 32.

Process intended for the subjects of the following States and Thakurates should be forwarded to the address of the Political Officers in whose respective charges they are shown below:—

States and Thakurates.	Address of the Officer holding the Political charge.
1. Karandih, Arnia and Kheri Rajpur.	The Resident at Gwalior, Post Office, Gwalior Residency.
2. Kaitha.	The Resident at Indore, Indore.
3. Dewas (Senior and Junior Branches), Bagli Pathari and Uni.	The Political Agent in Malway; Nimuch.

—G. R. (J. D.), No. 427, 21st Jan. 1909; B. G. G., 1909, Pt. I, p. 225; H. C. Sup. Civ. Cir., No. 75; cancelling G. R. (J. D.), No. 8011, 3th Dec. 1902; B. G. G., 1906, Pt. I, p. 403; H. C. Sup. Civ. Cir. No. 32 last para.

133. The Baroda Courts will serve all summonses issued by Civil Courts in British territory on the understanding that the Darbar will not be asked to enforce attendance. British Courts should serve Civil summonses issued by Baroda Courts, on similar terms—B. G. G., 1901, Pt. I, p. 186.

133A. Summonses issued by all British Indian Courts and all Courts established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State, if sent to the Court of the Administrator, Sachin State, or that of the Diwan while the State is under British Administration, will be served by that Court as if the summons had been issued by itself, and after being so served will be returned with an endorsement of such service under the hand of the Judge of the Court. Bom. G. R. (P. D.) No. 6334, 22nd September 1920; H. C. Sup. Civil Circular No. 1.

134. The provisions of section 91 of the Civil Procedure Code (now Sch. I, O. V, r. 30) allowing the substitution of a letter for a summons are to be applied in the case of all Covenanted and Commissioned Officers, Justices of Peace, First Class Subordinate Judges, First Class Magistrates of rank not below that of Deputy

## D—CALCUTTA HIGH COURT.

RULES UNDER THE COURT FEES ACT, RELATING TO FEES PAYABLE UNDER THAT ACT, AS FRAMED BY THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

## PROCESS FEES.

The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged :—

## PART I.

*Table of Fees in the High Court, Appellate Jurisdiction.*

*Article 1.*—In every case in which personal or substituted service of any process on parties to the cause is required—

when not more than four persons are to be served with the same document—*one fee* ... .. Rs. 3 0 0

when such persons are more than four in number, then the fee abovementioned and an additional fee of 8 annas for every such person in excess of four ... .. Rs. 0 8 0

Provided that, in the last-mentioned case, where such persons reside in the same or immediately adjacent villages, the additional fee may be such sum, not exceeding the amount of fee prescribed, as the High Court may, in the particular case, determine.

Provided, also that, in analogous cases, where the appellant is the same, but the respondents are different, but reside in the same or immediately adjacent village, the same rule shall apply.

*Article 2.*—In every case in which personal or substituted service of any process on any persons who are not parties is required—

when the number of such persons is not more than four, *one fee* ... .. Rs. 3 0 0

when there are more than four such persons, then the fee abovementioned for the first four, and an additional fee of eight annas for every one in excess of that number ... .. Re. 0 8 0

*Article 3.*—For the execution of a warrant for arrest of person ... .. Rs. 3 0 0

*Article 4.*—For service or execution of any process issued by the Court, not specified in any preceding article of this Part ... .. Rs. 3 0 0

## PART II.

*Table of Fees in the Courts of Judges and Subordinate Judges and in the Revenue Courts, when the Suit in the Revenue Courts, by which the process is issued, is valued at a sum exceeding Rs. 1,000.*

*Article 1.*—In every case in which personal or substituted service of any process on parties to the cause is required—

*Article 5.*—For the publication by posting up a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this Part, irrespective of the number of such publication ... .. Rs. 2 0 0

*Article 6.*—For executing a decree by the arrest of the person or of executing a warrant of arrest before judgment (G. L. No. 7 of 1922) ... .. Rs. 10 0 0

*Article 7.*—When an order for the sale of property, other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(a) for proclaiming the order of sale under Order XXI, rule 66 of the Code of Civil Procedure, a fee of ... Rs. 2 0 0

(b) for selling the property, percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of ... .. 2 per cent.

together with a fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of ... .. 1 per cent.

Provided that, where a sale of immoveable property is set aside under Order XXI, rules 89, 90 and 91 of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act, VIII of 1885, any poundage or other fee charged for selling the property shall on application be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing and conducting the sale and it appears that decree-holder was privy thereto. (Rule 5 of 1921.)

*Note 1.*—The fee under clause (a) must be paid when the process is obtained.

The percentage or poundage under clause (b) must be paid—

(1) in a case where the purchaser is a person other than the decree holder at the time of making the application for payment of the proceeds of sale out of Court, as provided in Rule 4: and

(2) in case where the decree-holder has been permitted to purchase at the time of the presentation of his application for permission to set off the purchase money against the amount of the decree as provided in Rule 5.

*Note 2.*—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i.e.*, a poundage fee of As. 8 should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000 and, in the case of the proceeds of the sale executing Rs. 1,000, an additional fee of As. 4 for every Rs. 25 or part thereof should be levied.

time to be occupied by the officer in going, effecting the attachment, and returning; when the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of O. XXI, r. 43, of the Code of Civil Procedure :

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in Rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

*Article 4.*—For the proclamation and publication of any order of prohibition under O. XXI, r. 54, of the Code of Civil Procedure, irrespective of the number of such proclamations or publications

... ..	Re. 1 0 0
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*Article 5.*—For the publication by posting-up of a copy or copies of the notification of a proceeding or process, not specially mentioned in any article of this part, irrespective of the number of such publications

... ..	Re. 1 0 0
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*Article 6.*—For executing a decree by the arrest of the person or for executing a warrant of arrest before judgment. (G. L. No, 7 of 1922)

... ..	Re. 4 0 0
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*Article 7.*—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—

(a) for proclaiming the order of sale under O. XXI, r. 66, of the Code of Civil Procedure, a fee of

... ..	Re. 1 0 0
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(b) For selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of

*2 per cent.*

together with a further fee on all excess of gross proceeds beyond Rs. 1,000 at the rate of

*1 per cent.*

Provided that when a sale of immoveable property is set aside under O. XXI, r. 89, 90 or 91 of the Code of Civil Procedure, or under s. 174 of the Bengal Tenancy Act any poundage or other fee charged for selling the property shall, on application be refunded.

Provided further that no refund shall be made on the application of the decree-holder when a sale is set aside on the ground of material irregularity or fraud in publishing and conducting the sale and it appears that the decree-holder was privy thereto. (Rule 5 of 1921).

- (b) for each man necessary to ensure the safe custody of properties so attached when such man is actually in possession, *per diem* (as amended by G. L. 11, dated 8-8-21) ... .. Re. 0 8 0

*Note 1.*—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the man actually employed.

*Note 2.*—The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Court shall order, not being ordinarily less than 15 days, and the number of days required for the coming and going of the officer; but, when the officer is to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning, when the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the Court shall fix the daily fee with reference to the provisions of O. XXI, r. 43, of the Code of Civil Procedure;

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the Court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

*Article 4.*—For the proclamation and publication of any order of prohibition under O. XXI, r. 54 of the Code of Civil Procedure irrespective of the number of such proclamations or publications ... .. Re. 1 0 0

*Article 5.*—For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specifically mentioned in any article of this Part, irrespective of the number of such publications ... .. Re. 1 0 0

*Article 6.*—For executing a decree by arrest of the person or for executing a warrant of arrest before judgment (G. L. No. 7 of 1922) ... .. Re. 1 0 0

*Article 7.*—Where an order for sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—

- (a) for proclaiming the order of sale under O. XXI, r. 66 of the Code of Civil Procedure, a fee of ... Re. 1 0 0

- (b) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000, at the rate of 2 *per cent.*,

4. The proceeds of a sale effected in execution of any decree will only be paid out of Court on any application made for that purpose in writing and the poundage fee for selling the property provided in clause (b) of Article 7 of Parts II, III and IV must be paid by stamps affixed to or impressed upon, the first of such applications whether it be or not made by the person who obtained the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. In case in which the decree-holder applies for leave to purchase under O. XXI, r. 72, of the Code of Civil Procedure, no order to set off the purchase-money against the amount of the decree shall be made upon the application for leave to purchase. Such order shall be made upon a petition presented after the property has been knocked down to the decree-holder at the auction-sale, and such petition shall be stamped with stamps of the value of the poundage fee due for selling the property under clause (b) of Article 7 of Parts II, III, and IV.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamps attached to the petition, shall be ascertained, and shall be added to the decree; and in cases in which the amount of the purchase-money exceeds the amount of the decree, and of such costs, the decree-holder, who has so purchased the property, shall pay into Court the sum of 25 *per cent.* upon the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with O. XXI, r. 85 of the Code of Civil Procedure.

7. Throughout, or in any part of, the localities mentioned in the Schedule annexed to this rule, and for the periods of the year during which travelling except by boat is in the opinion of the District Judge, impracticable, the fees chargeable for the services of processes shall be increased by 25 *per cent.*, in order to provide for payment of the boat-hire or ferry toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ *per cent.* over the fees ordinarily leviable at the discretion of the District Judge in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

*Note 1.*—The process-server's boat-hire passed under this rule should alone be included under the head of "Process serving charges" under "Special Contingencies."—*Vide* Resolution of the Financial Department of the Government of Bengal, dated the 4th August 1890.

*Note (2)* The fee levied from parties on account of boat hire should be realised in Court-fees stamps. If the District Judge finds that the total annual realisation of boat hire exceeds the amount necessary to be paid out as boat hire in the course of the year, he

8. (a) In such districts or parts of districts as are not for the time being subject to Rule 7, when, in order to the service of any process, the peon has to cross a ferry, then the amount, if any, legally eligible as toll shall be paid by the Court executing such process from its permanent advance.
- (b) The permanent advance mentioned in this Rule is the special permanent advance sanctioned by the Local Government for the purposes of the Rules.
9. In cases in which the process is to be served in the jurisdiction of another Court, the proper fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that Court, and a note shall be made on the process stating that this has been done. A Court, which receives from another court whether in the same Province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

*Note 1.*—The fees paid in pursuance of these rules must, in all proceedings, be deemed and treated as part of the necessary and proper cost of the party who pays them.

*Note 2.*—By arrangement between the Government of India and His Highness the Nizam of Hyderabad, Civil processes for service or execution within His Highness's territories will be issued and served in accordance with the above rule.

Processes issued by Civil Courts in His Highness the Nizam's territories, will be served or executed in the Provinces of Bengal Presidency free of charge.

*Note 3.*—As regards the service of process and execution of decrees in the Chittagong Hill Tracts, *see* Chapter I, Rules 41 and 87 of Civil Circular Order of the Calcutta High Court.

*Note 4.*—Process issued by Courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service. A sum of Rs. 32 is considered likely to cover such cost.

In Mauritius the cost of service is Rs. 3 per person in town, and to this must be added 75 cents per mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted.

In the case of summons intended for service on a person in Mauritius the procedure indicated by O. V. R. 25 of the Code of Civil Procedure should be adopted whenever possible in preference to effecting service through the Mauritius Government.

one fee only shall according to the scale in Rule II, be charged in respect of the first four processes and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of court.

Nature of process.		Courts of First grade	Courts of Second grade	Courts of third grade.
		Rs. A. P.	Rs. A. P.	Rs. A. P.
Rates of additional fee	...	0 8 0	0 2 0	0 2 0
Maximum	...	15 0 0	10 0 0	0 2 0

VI. The stamps received for court-fees shall be applied to the application upon which the process is to be issued.

VII. A process issued by any court in British territory whether of Civil, Revenue, or Criminal Jurisdiction or any court established by or continued by the Governor General in Council or by any Civil or Revenue court in Native States in Central India shall be served free of charge by any court in the said areas, if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the court issuing the process is situated. When any court in the said areas transmit a process for service or execution to any court beyond its jurisdiction a certificate shall be endorsed on the process that the fee chargeable under Rule II or Rule V as the case may be has been levied.

VIII. Ordinarily process-servers should travel on foot when proceeding to serve or execute processes, but in special cases, the judge of the court issuing the process may permit the journey to be made by Railway. In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies, and not charged to the person at whose instance the process is issued.

IX. A court may remit the process fee, in whole or in part whenever it is satisfied that the complainant or the accused has not the means of paying them.

X. No fee shall be chargeable for any process of a Criminal Court issued through the Police in cognizable cases, or for any process issued by a court of its own motion in any case whatsoever or of any process issued upon the complaint of a public officer, acting as such officer. See Gazette of India, dated 27-9-1913, Part II, pp. 1797-99.



establishment serving under his orders to the service of processes issued by Revenue and Criminal Courts, but the Local Government has, with effect from 1st August 1914, authorised the transfer of the control of the process-serving establishments of all Courts in each district from the District Court to the Senior Subordinate Judge.

7. The Civil Nazir must be regarded as the head of the process serving establishment; he will submit any reports relating to the members or the duties of the establishment to the Senior Subordinate Judge.

8. In making appointments to the post of Civil Nazir care should be taken to appoint thoroughly efficient men only. A person who is not competent to examine and keep accounts in both English and Urdu should not usually be entertained. Ordinarily, the Civil Nazir should not be employed on duties connected with the Criminal and Revenue Courts for which the District Nazir must be held solely responsible.

9. The Civil Nazir, Naib Nazirs, Maded Naib Nazirs, Execution Bailiff and process-servers will all be appointed by the Senior Subordinate Judge and will be dealt with under the powers conferred upon him by the Punjab Courts Act. (See paragraph 6 above.)

10. No one who is sickly, old, or incapable of a good deal of physical exertion should be appointed as Execution Bailiff or process-server. A knowledge of Urdu should be regarded as an indispensable qualification for appointment to the post of Execution Bailiff, and no one should ordinarily be appointed a process-server unless he has passed the Upper Primary Standard and can read and write some language current in the province. No process-server should be retained in service who is not capable of fully and intelligently carrying out the rules relating to the proper service of processes.

11. Ordinarily promotion ought to be confined within the line, and no employee or candidate in the clerical line should have any claim to a Bailiff's or Naib Nazir's post if there is a fit peon or Bailiff forthcoming.

Superior educational qualifications alone should not justify an outsider being given a superior appointment in this line, if a competent person, capable of doing the work efficiently, can be found in the lower grades.

12. The employment of process-servers upon duties unconnected with the serving of processes is absolutely forbidden.

13. The Civil Nazir will be expected to keep up the Civil Deposit and Repayment Accounts and to manage the execution of decree business. It is left to Senior Subordinate Judges to issue detailed instructions as to the duties which are to be performed by the Civil Nazir. The Civil Nazir should devote his time to the distribution of business amongst process-servers, the transmission of

be retained for the Court of each Commissioner, District and Sessions Judge, and for each district in the province.

2. The number of process-servers to be retained in each district shall be allotted by the Senior Subordinate Judge, subject to the control of the District Judge and High Court, to the various Courts of the District in such manner as shall be most convenient for the service of processes.

3. In submitting proposals with regard to the maximum number of process-servers to be retained in any district, and in distributing the process-servers retained amongst the various Courts, the Senior Subordinate Judge should ascertain, and report when necessary, the number of processes issued from his own Court and from every other Civil, Revenue and Criminal Court in the district during each month of the previous year; and the maximum number of process-servers fixed for each Court shall be so many as are sufficient for the service of the largest number of processes ascertained to have been issued in any one month. In calculating the number of process-servers capable of serving such ascertained number of process, regard shall be paid to,—

(a) the average distance travelled by the peon;

(b) the nature of the country to be traversed and the local circumstances;

(c) the number of process-servers by whom the processes were actually served.<sup>1</sup>

4. Should it appear to the Court, on the motion of a party to a suit or proceeding, or otherwise, that, for the convenience of the parties or for some other reason, it is expedient that any process should be executed by special messenger, such process shall be so executed. Except in the case of a warrant for arrest, a special fee will be payable for such emergent service; and the Court will at the time of making its order, declare by whom the fee shall be paid and whether it shall be included in the costs of the suit or be charged to a particular party.

5. The process-servers entertained under those rules shall be employed exclusively in the work of serving and executing processes.

#### PART IV

##### SUBSIDIARY INSTRUCTIONS REGARDING PROCESS-FEE AND PROCESS-SERVING ESTABLISHMENTS FOR THE GUIDANCE OF THE COURTS AND PROCESS-SERVERS IN THE PUNJAB.

1. Process-serving establishments are appointed and dealt with in accordance with sections 35 to 37 of the Punjab Courts Act, 1918, as amended.

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<sup>1</sup> In fixing the number of process-servers regard must be had to the system of serving processes through agencies located in tahals.

9. On every process issued from any Court the following particulars shall be recorded, namely :—(1) the name of the process-server deputed to serve or execute the same; (2) the period within which the process-server is required to certify service or execution; (3) the amount of fee paid and the date of payment; and (4) the date of return after service or execution.

Such endorsement shall be signed by the Civil Nazir or Naib Nazir, or Bailiff.

10. An account of court-fee stamps realised as process fee of processes issued (Civil, Revenue and Criminal), of the number of process-servers employed, of the cost of establishment and of contingencies, shall be kept for each Court where a separate establishment is entertained.

11. A statement giving information on the above points should be submitted with the annual civil reports.

12. With the record of each Civil and Revenue case, and of each Criminal case in which process-fees are levied, should be kept a separate sheet of paper to be termed the 'Diary of process fee' which should be devoted to the sole purpose of maintaining a record of process-fees. This diary should be in the prescribed form, and should form a portion of Part B. In it entries should be made in chronological order of every process ordered to be issued in the case, and the stamps should be affixed opposite each entry and cancelled immediately upon being affixed.

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### G—MADRAS HIGH COURT.

#### A—PROCESS FEES AND POUNDAGE.

##### I. MUFFASAL CIVIL COURTS.

<sup>1</sup> 1. (1) The following schedule of fees chargeable for serving and executing processes issued by the High Court of Madras in its appellate jurisdiction and by all Civil and Revenue Courts established within the High Court's appellate jurisdiction, having been framed by the High Court under Section 20 of the Court-fees Act, 1870, and confirmed by the Government of Madras and sanctioned by the Governor-General of India in Council, will come into force from the 1st day of July 1884.

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1. Notification No. 209, Judicial, dated 16-6-1884, Fort. St. George Gazette, dated 24th June 1884, Part I, p. 382.

deposited shall be part of the costs of the cause: Provided, that when processes have to be executed in the Wynnad Taluk, the party shall deposit the actual cost of bus fare from the Court to the place of execution and back and such cost shall be part of the costs of the cause (substituted by P. Dis. No. 572 of 1932 dated 19-7-32)

*Notes 2.*—For process applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

*Notes 3.*—If the poundage chargeable on the purchase-money should involve fractions of an anna, half an anna or more shall be taken as an anna and fractions less than half an anna shall be omitted from the amount payable. (*Added by notification, dated 29th April 1924, Dis. No. 1110/24.*)

*N. B.*—(1) Each process should be paid for according to the time which it really occupies. The party must not be charged for time occupied in serving processes other than his own, but he must pay for all the days which his own process or processes would have occupied, if it or they had alone been entrusted to the server. When one applicant puts in several processes to be executed at the same time in the same locality, the charge for any additional days occupied on account of such processes may be distributed over them.

(2) The High Court considers that there is nothing objectionable in levying the additional fee in advance when it is calculated that the journey to and fro and the work to be done will take more than three days in all and that, for this purpose, a journey of 15 miles a day may fairly be taken as a rough basis of calculation, not necessarily to be adhered to in all circumstances.

(3) In cases, however, in which a process which would ordinarily have been executed within the three days allowed by the rules, has actually taken, contrary to expectation, more than three days to execute, the High Court considers that no additional fee need be collected subsequently for the excess number of days. The original levy should be regarded as final, as such cases are not frequent and there would be difficulty in collecting the excess.

2. *1 Addendum to the schedule of process fees.*—The following *addendum* to the schedule of fees made by the High Court and chargeable under the rules framed in accordance with the provisions of Section 20 of the Court-fees Act, VII of 1870, which has been confirmed by His Excellency the Governor in Council and sanctioned by the Government of India is published:—

(1) In every case in which application is made to a Court for the issue of process beyond the jurisdiction of the Court there shall be levied the fee that would be leviable for the issue of such process in the Court to which the application is made.

(2) The fees levied under this rule must be paid in Court-fee labels of the proper amount to be affixed to the application; such labels shall be punched by the officer appointed to receive the application, who will endorse a note on the process that the proper fee for the issue thereof has been levied.

(3) When process is forwarded by any Court in British India or in the State of Mysore or [in the State of Cochin], [Bangalore], Sandur, Pudukottai or Travancore] or [in the territories of His Highness the Nizam] to a Court subordinate to the High Court for execution, such subordinate Court shall accept the certificate endorsed on the process as sufficient proof that the proper fee for the issue thereof has been paid and shall deliver such process to the proper officer for service and shall re-transmit the process to the Court by which such process was transmitted to it, with a return

<sup>1</sup> Notification No. 398, Judicial, dated 1-8-1885. Port George Gazette, dated 25-9-1885, p. 628.

# 1 II. THE MADRAS CITY CIVIL COURT.

Nature of process.	Amount leviable.	
	In suits in which the value of the subject-matter in dispute does not exceed Rs. 1,000.	In all other suits.
I. For each summons or notice	Rs. A. P.	Rs. A. P.
(a) To a single defendant or witness	0 8 0	1 0 0
(b) To every additional defendant or witness residing in the same Municipal Division of the city of Madras if the process be applied for at the same time	0 4 0	0 8 0
II. For every warrant		
(a) Of arrest in respect of every person to be arrested.	1 0 0	2 0 0
(b) Of attachment in respect of every such warrant		
(c) Of sale in respect of every such warrant		
(d) Of delivery of possession in respect of every such warrant.		
with an additional fee for the services of every officer entrusted with the execution of the warrant for each day occupied in its execution after the 3rd day beginning with the day on which the warrant was issued	0 4 0	0 6 0
III. For every proclamation, injunction or order, an additional fee being leviable after the 3rd day as above	1 0 0	2 0 0
IV. For each process not otherwise provided for herein	0 4 0	0 6 0
V. In respect of sales, a fee by way of poundage on the purchase money calculated at half anna in the rupee on the first five hundred rupees and quarter anna in the rupee on any additional sum above Rs. 500.	0 8 0	1 0 0

*Note 1.*—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of the costs of the cause.

*Note 2.*—For process applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

All fee chargeable under this schedule shall be collected and dealt with in the same manner as fees chargeable under the Court-fees Act of 1870.

1 Notification No. 500, Judicial, dated 10-12-1892. Fort St. George Gazette, Part I, p. 1553.

## B—PROCESS SERVICE RULES.

The following rules, <sup>1</sup> under Section 20 of the Court Fees Act, No. VII of 1870, for the service and execution of processes issued by the Civil Courts outside the Presidency Town in the Madras Presidency, have received the sanction of the Governor-General in Council :—

I: *Central Nazarats*.—There shall be one general establishment of amins and peons for the execution and service of processes issued by all the Civil Courts at the following stations and at such other places as the High Court may hereafter direct :—Vellore, Cuddalore, Chingleput, Chittoor, Coimbatore, Cuddapah, Berhampore, Cocanada, Rajahmundry, Ellore, Guntur, Bapatla, Mangalore, Bazwada, Masulipatam, Madura, Tellicherry, Calicut, Palghat, Nellore, Salem, Mayavaram, Negapatam, Tiruvarur, Kumbakonam Tanjore, Tinnevely, Tuticorin, Trichinopoly and Vizagapatam.

Such establishment shall be under the immediate direction of a Central Nazir and the control of the District Judge; or of the Sub-Judge in the event of a Central Nazarat being established at any station where there is no District Judge. (Substituted by Notification dated 6-7-1932—Vide G. O. Ms. No. 1700 Law General dated 27-4-1932).

II: *Deputy Nazir at outlying stations*.—At all other stations the process establishment shall be under the immediate direction of a Deputy Nazir who shall be under the control of the District Munsif having jurisdiction at such station.

III and IV. [Relates to pay and security of Nazirs—Omitted.]

V: *Officers to whom processes should be transmitted for service*.—The proper officer to whom processes shall be transmitted for service under Section 72 of the Code of Civil Procedure, 1882 (Order V, Rule 9 of the Code of 1908) shall be :—

- (a) The *Central Nazir* in respect of all processes issued by any Court located or having jurisdiction at a station where there is a Central Nazir, for service within the jurisdiction of a Munsif located at such a station.
- (b) The *Deputy Nazir*, at stations where there is no Central Nazir, and in respect of process issued by any superior Court for service within the jurisdiction of an outlying Munsif.

VI. *Presentation of application for issue of process and procedure thereafter*.—(1) All applications for the issue of processes except those for the issue of emergent processes whether money is deposited with them or not, <sup>2</sup> and except those (accompanied with processes

<sup>1</sup> Judicial Notification No. 42, dated 29th January 1884, published at pages 111 to 114 of Part I, Fort St. George Gazette, dated 19th February 1884.

<sup>2</sup> Added by R. O. C. No. 2163 of 1928, C. L. Notification dated 11-9-1928. Fort St. George Gazette, Pt. II, pp. 1352-1353.

of a design different from that of the date stamp used by the Chief Ministerial Officer. Date stamps may be obtained on indent from the Superintendents, Government Press.

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3. The Central or Deputy Nazir shall sign the processes now signed by the Chief Ministerial Officer and affix to the processes so signed a duplicate court seal with the word "Nazarat," inscribed thereon, which will be supplied to him for the purpose.

4. The presiding officer of the Court shall send money orders relating to the service of processes received by him to the Central or Deputy Nazir, instead of to the Chief Ministerial Officer. The Central or Deputy Nazir shall make a note of the particulars relating to the money orders in his register.

5. A notice showing the unexpended witness batta available for refund and directing parties and pleaders concerned to apply for refund on such two days in each week and at such hours as the Court may in its discretion fix with due regard to the convenience of all parties, shall be exhibited on the notice board of the Court daily. In cases where the party or his pleader has failed to obtain a refund of the unexpended witness batta within the time prescribed in rule 170 and where the same has had to be remitted to the Treasury, a penalty of one anna per half rupee or fraction thereof shall be imposed upon the party in the event of his applying for refund at a later date.

<sup>1</sup> (5) Application for issue of process accompanied with process prepared or not presented along with the plaint, memorandum of appeal, cross objection or application shall after the plaint, memorandum of appeal or cross objection or application has been admitted, be transmitted to the Central or Deputy Nazir who will enter them in the B Register (Civil Register No. 53).

VII. *Intimation of receipts and disbursements in the Nazarat to the Chief Ministerial Officer.*—As soon as possible after 3 p.m. or such hour as the District Judge may fix, the Central or Deputy Nazir shall send to the Chief Ministerial Officer the receipt books and a statement of the totals of stamps and all amounts received and of money expended during the day, in order that the necessary entries may be made in the cash book, ledger and register of documents and court-fees.

VIII. *Lists of processes for service in other Nazarats.*—One hour before the post time for each outlying Munsif's station, the Central or Deputy Nazir of each Court shall prepare lists from his registers of all processes to be served or executed within the jurisdiction of outlying Munsifs and such lists shall forthwith be sent by post on His Majesty's Service to Deputy Nazirs together with all such processes.

IX. *Procedure on receipt of processes for service.*—On receiving any batch of processes, the Central or Deputy Nazir, as the case may be, shall give them general numbers and enter them in a register which will be kept by himself or under his superintendence in the form B, annexed hereto (*vide* Civil Register No. 53).

<sup>1</sup> G. O. 2865 Mis. Law General, Notification, dated 11-2-1928 Fort St. Gazette, Part II, pp. 1352-1353.

XVI. *Remittance of witness batta.*—The total amount of the batta of witnesses, etc., on all the processes issuing to a given Court on any day for service shall be remitted by money order by the Court issuing the processes to the Court to which the processes are sent for service at the same time as the processes are despatched to the latter Court. Any unspent balance in the hands of the Court serving the processes shall be returned to the Court issuing the processes by money order at intervals of a week, (but it may be remitted along with witness batta if such is being remitted at an earlier date); and the presiding Judge, or in the case of a District Court or a Sub-Court, the Sharistadar, shall check and verify from week to week the issue of such money orders: the money order commission in the above cases shall be charged in the contingent bill of the Courts. (Substituted by Notification P. Dis. No. 761 of 1934 dated 1-11-1934).

XVII. *Statement of money orders issued to other courts.*—On or before the 6th of each month, the Court issuing money orders under the preceding rule shall send to each Court to which money orders have been issued in the preceding month a statement showing the number and particulars of the money orders so issued: and it shall be the duty of the presiding officer of the latter Court to see that the amount involved have been received and accounted for.

XVIII. *Emergent Processes.*—The presiding Judge of any Court may, for any sufficient reason, at any hour of the day, transmit a process for emergent execution within the jurisdiction of the head-quarter Munsiff, and it shall be the duty of Central or Deputy Nazir (as the case may be) on receiving such process signed by the Judge, to make immediate arrangements accordingly.

In a case of very special urgency, the presiding Judge may deliver any such process to one of the process servers in attendance on his Court for immediate service or execution.

XIX. *Execution thereof not to be delayed.*—The Deputy Nazirs of outlying Courts shall, on no account delay any process which may be signed by a presiding Judge as emergent. All other processes it shall be lawful for them to keep back for any period, not exceeding three days, which may be necessary to admit of a sufficient number accumulating for a particular neighbourhood.

XX. *Deputation of special process-server from headquarters.*—The presiding Judge of any superior Court may direct, on the application of the party applying for any particular process which would ordinarily be sent for service to an outlying Court, that it be served or executed by a special process server from headquarters, provided that the pay of such process-server at the rate of 8 annas a day for a peon or one Rupee a day for an amin, for the time he is likely to be employed on such duty be paid in advance; and the Judge may, for any sufficient reason, direct that such extra charge be costs of the suit or proceeding.



shall reduce the number of peons in the Central Nazarat, or any outlying Court, whenever the average number of processes issued to each man (exclusive of those allowed under Rule XXII to be in attendance in the Courts) falls short of the prescribed average by more than ten *per centum*: (Substituted by Notification P. Dis. No. 286 of 1934 dated 28-4-1934)

### CRIMINAL COURTS.

#### FEES FOR SERVICE OF PROCESS.

[364] All payments for the service of processes by the Criminal Courts in the Mufassal subordinate to the High Court, in the case of offences triable by summons case procedure, other than offences for which the Police may arrest without warrant, shall be collected according to the rates fixed in the subjoined schedule :—

#### *Schedule—Criminal Courts.*

- |   |     |     |            |
|---|-----|-----|------------|
| (1) Summons to defendant  | ... | ... | Re. 0 8 0  |
| And for every additional defendant, if applied for at the same time and if resident in the same neighbourhood                                   | ... | ... | Re. 0 4 0  |
| (2) Summons to a witness  | ... | ... | Re. 0 8 0  |
| And for every additional witness, if applied for at the same time and if witness resides in the same neighbourhood                              | ... | ... | Re. 0 4 0  |
| (3) Warrant of arrest   | ... | ... | Re. 0 12 0 |
| (4) Notice (including notice to parties in revision petitions and other applications), order, injunction or warrant, not otherwise provided for | ... | ... | Re. 0 8 0  |

(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates only shall be charged. The Judge of every Court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court house.

(2) When a warrant remains unexecuted for 15 days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party, at whose instance the warrant was issued for every 15 days or portion of 15 days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court.

(3) This shall not apply to warrants issued under Planters Labour Act (Madras Act 1 of 1903) and forwarded to an officer of the

- (c) Where the witness in question has been compelled to attend by a process issued under section 540 of the Code.
- (d) Cases in which the Court certifies that the attendance of such witness was directly in furtherance of the interest of public justice.

[367.] For the purposes of these rules, Europeans, Anglo-Indians, and Indians shall be divided into three classes and the Magistrate before whom they are required to appear, or, in the case of witnesses from the mufassal, the Magistrate of the district from which they come, shall fix the class with due regard to the station in life of each individual.

[368.] The following are the maximum rate which may be awarded to the several classes of witnesses and no expenses in excess of, or other than, those here provided for, shall be allowed :—

Witness.	Class.	Subsistence allowance.	Carriage hire allowable for days of actual attendance.	Travelling expenses if any, incurred.			
				By Rail.	By a public motor service.	By road otherwise than by public motor service.	By sea or canal.
Europeans and Eurasians	1st Class	Rs. 5 per day.	Rs. 3 per day.	1st class fare.	1st class fare.	As. 8 per mile.	Actual expenses of passage.
	2nd "	Rs. 3 per day.	Rs. 2 per day.	2nd class fare.	2nd class fare.	As. 6 per mile.	
	3rd "	Rs. 1-8-0 per day.	Re. 1 per day.	3rd class fare.	3rd class fare.	As. 4 per mile.	
Indians	1st "	Rs. 2 per day.	Rs. 2 per day.	1st class fare.	1st class fare.	As. 6 per mile.	
	2nd "	Re. 1 per day.	Re. 1 per day.	2nd class fare.	2nd class fare.	As. 2 per mile.	
	3rd "	As. 5 per day.	Nil.	3rd class fare.	3rd class fare.	As. 2 per 10 miles.	

The rates mentioned in the above table are those revised by the High Court in Dis. No. 927 of 1917. Even now the rule does not expressly state the allowance and batta that have to be given to a witness residing in the city for his attendance in Court.

If there are only two classes, the first and second class witnesses will be paid higher class fare and third class witnesses the lower class fare.

shall be served on the party direct (Dis. No. 278 of 1928, dated 9-3-1928).

63. The fees for the service of notices on respondents shall be paid in the form of Court-fee labels, and the Court-fee labels shall be attached to a memorandum in Form No. I of Appendix IV (A. S. Rules).

64. When an appellant or his pleader has failed to pay into the Registrar's Office within the prescribed periods the fees required for the service of notices on the respondent, the appeal or appeals shall be posted for the orders of the Court.

#### NOTIFICATIONS BY THE BOARD OF REVENUE UNDER THE COURT-FEES ACT (VII OF 1870).

*Fort St. George, August 1, 1873.*

(Published on page 1257 of the Fort St. George Gazette, 5th August 1873.)

The following rule framed by the Board of Revenue in exercise of the power conferred by the Court-fees Act, section 23, and approved by the Governor of Fort St. George in Council and the Governor-General in Council, is notified for general information :—

The number of process-servers fixed by the District Collector for his own office and the offices subordinate to him shall be so fixed that the cost of the establishment may be at least covered by the amount of fees levied on the processes served and executed by them. It shall be reported to the Board of Revenue in the first instance for confirmation, and shall be altered from time to time as they may direct, and it shall not be increased without their sanction ; but the Collector shall have power to transfer process-servers from one office to another within his jurisdiction as experience may dictate, and, when convenience requires that process issued by one officer shall be served by the process-servers attached to another, they may be served accordingly.

#### PROCESS-SERVICE FEES.

114. The Government of India having directed that all collections for the service of processes shall be made by means of stamps, the following rules were issued by the High Court :—

- (i) All collections shall be made by Court-fee labels to be affixed to the application for the issue of process. Such labels will be punched immediately on receipt by the officer appointed to receive the application who will endorse a note on the process that the proper fee for the issue thereof has been levied. In the event of

<sup>1</sup> Number is that of the standing orders published in the Madras Stamp Manual, 4th edn., p. 340.

## APPENDIX IV. DENOMINATION AND KIND OF STAMPS.

### A—RULES MADE BY THE GOVERNMENT OF INDIA.

#### NOTIFICATIONS OF THE GOVERNMENT OF INDIA UNDER THE COURT-FEES ACT (VII OF 1870).

*Calcutta, the 20th March 1885.*

(Published on page 213 of the *Gazette of India* 1885, Part I.

1 No. 1522.—In exercise of the powers conferred by section 26 of the Court Fees Act, 1870, the Governor-General in Council directs that the additional court-fee payable under section 19-B of the said Act on Probates and Letters of Administration shall be denoted either—

- (a) by impressed and adhesive stamps in the manner prescribed in Notification No. 361 of 18th April 1883; or
- (b) wholly by adhesive stamps of the kind described in clause I of Notification No. 361 of 18th April 1883.

*Simla the 18th April 1883.*

(Published on page 189 of the *Gazette of India* 1883, Part I,

2 No. 361.—In exercise of the powers conferred by sections 26 and 27 of the Court-Fees Act, 1870, and of all the other powers enabling him in this behalf; and in supersession of notification by the Government of India in the Financial Department No. 1520, dated 5th March 1875, and all other notifications on the subject, the Governor-General in Council is pleased to issue the following directions :—

I. When in any case the fee chargeable under the said Act is less than Rs. 10, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps of the size and pattern introduced in 1883 bearing the words "Court-fee," and containing three lines in the middle with the Queen's head and the value printed on the left side, or adhesive stamps of any different shape, size or pattern, bearing the words "Court-Fees" which may hereafter be issued for use in supersession of, or in addition to, the adhesive stamps now in use.

II. When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 10, such fee shall be denoted by impressed stamps bearing the words "Court-Fees," adhesive stamps being only employed to make up fractions of less than Rs. 10.

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1 This is superseded in Madras by Madras Government Notification dated 27-3-1929, for which see *infra*.

2 This is superseded in Madras by Madras Government Notification dated 25-2-1924 for which see *infra*.

(a—a) Substituted by Government of India Notification No. 1494-S. R., dated 29th March 1895, *Port St. George Gazette*, 9th April 1895, Part I, page 431. This order came into force on the 1st July 1895. See at page 837 *infra*.

## B—RULES MADE BY THE MADRAS GOVERNMENT.

*Rules for the stamps to be used.**The 25th February 1924.*

I.—In exercise of the powers conferred by section 26 of the Court-Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920) and the Madras Court Fees (Amendment) Act, 1922 (Madras Act V of 1922) and all other powers enabling him in this behalf and in supersession of the notification of the Government of India No. 1522, dated 20th March 1885, published on page 213 of Part I of the *Gazette of India*, dated 21st March 1885 the Governor in Council is hereby pleased to direct that the additional Court-fee payable under section 19-E of the first mentioned Act on Probates or Letters of Administration shall be denoted either—

(a) by impressed and adhesive stamps in the manner prescribed in the notification of the Local Government in the Revenue Department, No. I, dated 25th February 1924, or

(b) wholly by adhesive stamps of the kind described in clause 1 of the said notification of the Local Government.

[B.P.R. Mis. 99, 8th April 1929.]

*Adhesive stamps and Impressed stamps when to be used respectively.*—In exercise of the powers conferred by sections 26 and 35 of the Court-Fees Act, 1870, as amended by Act XXXVIII of 1920, and the Madras Court-Fees (Amendment) Act, 1922, and all other powers enabling them in this behalf and in supersession of the notification of the Government of India No. 361, dated 18th April 1883, published at page 307 of the *Fort St. George Gazette*, Part I, dated 8th May 1883, the Local Government are pleased to issue the following directions :—

(i) When in any case the fee chargeable under the said Act is less than Rs. 25, such fee shall be denoted by adhesive stamps only. Such adhesive stamps shall either be the adhesive stamps of the size and pattern introduced in 1883 bearing the words "Court-Fee," and containing three lines in the middle with the King's head and value printed on the left side, or adhesive stamps of any shape, size or pattern bearing the words "Court-Fees" which may hereafter be issued for the use in supersession of or in addition to, the adhesive stamps now in use.

(ii) When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 25, such fee shall be denoted by impressed stamps bearing the words "Court-Fees" adhesive stamps being only employed to make up fractions of less than Rs. 25.

(iii) If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

2. When in the case of fees amounting to or exceeding Rs. 25, the amount can be denoted by single impressed stamp, the fees shall be denoted by a single impressed stamp of the required value. But if the amount cannot be denoted by a single impressed stamp, or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available which may be required to make up the exact amount of the fee in combination with adhesive stamps to make up fractions of less than Rs. 25.

3. Any adhesive stamps which may be used under Rule (2) shall be affixed to the impressed stamp of the highest value employed in denoting the fee.

4. When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court Fees Act, a portion of the subject-matter shall be written on each impressed stamp so used, and the writing on each stamp shall be attested by the signature of the person or persons executing the document.

NOTE.—The following *executive instructions* have been issued by the Local Government:—When two or more impressed stamps are used to make up the amount of the fee chargeable under the Court Fees Act, a portion of the subject-matter shall *ordinarily* be written on each stamped sheet. Where this is impracticable or seriously inconvenient the document shall be written on one or more sheets bearing impressed stamps of the highest value, and the remaining stamps shall be punched and cancelled by the Court or its chief ministerial officer and attached to the grant, a certificate being recorded by the Court or its chief ministerial officer on the face of the first sheet of the document to the effect that the full Court-fee (*viz*, Rs.....) has been paid in stamps. The writing on each stamped sheet shall be attested by the signature of the person or persons executing the documents (G. O. No 17, Revenue, dated 5th January 1906.)

5. When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto, as may be necessary for the complete writing of the document, and the writing on the impressed stamps and on the plain paper shall be attested by the signature of the person or persons executing the document.

6. In the blank space left in the adhesive stamps, the vendor shall insert the name of the purchaser, the date of sale and his own ordinary signature. (G. O. No. 635, Revenue, dated 19th May 1883, and H. C. Pros. No. 2226, dated 10th July 1883, published at page 322 of Part I of the *Fort St. George Gazette*, dated 22nd May 1883 as amended by G. O. No. 297, Revenue, dated 25th February 1924.)

*Fort St. George, 15th February 1872.*

(Published on page 405 of the *Fort St. George Gazette*, dated 28th February 1872.)

Under the authority vested in him by section 27, Act VII of 1870 (Court-Fees), the Right Honourable the Governor in Council prescribes the following rule for general observance:—

Section 27.

stamps. The salaried vendor's stall or office shall be open daily for the sale of stamps on all days (except on such days as the Court shall not be sitting) between the hour of 10 a.m. and 5 p.m.

IV. (1) A bound register in the appended form called the "refund certificate book" shall be maintained in each of the Courts. The Bench Clerk of the Court ordering refund of half cost shall prepare without delay the refund certificate. Such certificate shall, after being checked and signed by the Head Clerk and the Registrar (or a Judge), be delivered to the party concerned by a clerk of the Court. Such clerk shall maintain a register showing the delivery of the refund certificates of all the Courts and he shall forward the duplicate of every certificate delivered to the salaried vendor.

(2) The amount mentioned in each refund certificate shall be paid to the party concerned by the salaried vendor who shall be provided by the Local Government with a permanent advance for the purpose.

(3) The salaried vendor shall, from time to time, draw from the Deputy Collector of Madras the amount paid on refund certificates on delivering to him the certificates so paid and such certificates shall be kept by the Deputy Collector as vouchers for the amount disbursed by him to the salaried vendor.

(4) At the end of each month the Registrar shall forward to the Collector of Madras a memorandum showing the number of refund certificates issued during the month and the amount of each such certificate.

V. It shall be the duty of the Head Clerk or other officer appointed by the Chief Judge to receive complaints and other documents to see that the blank space in any complaint or document is not unnecessarily covered with stamps, that stamps of the proper description and value are affixed and that the stamps are subsequently punched and cancelled properly before action is taken on such complaint or document. A receipt or memorandum for every complaint or document presented shall, if so required, be granted to the party concerned.

VI. These rules shall not apply to fees payable to any Advocate or Attorney of the High Court in any case certified, or to the costs of any reference to the High Court.

[G. O. 2236, Law (General), 6th June 1932; B. P. R. Mis. 175, 18th June 1932.]

jurisdiction, that the Sarishtadar in the Superior Courts, and Head Clerk in the District Munsif's Courts, shall personally attend to, and be personally responsible for the strict fulfilment of, the duty of receiving documents to be filed, examining the correctness of the stamps attached thereto, and immediately cancelling such stamps, as required by section 30 of the Court-Fees Act. There will be no objection to the ministerial officers named employing trustworthy subordinates to do the mere manual work of cancelling the stamps as proposed by some of the Judges; but it will be on the distinct understanding that the Sarishtadars or the Head Clerk, as the case may be, will be personally responsible for the due execution of the duty and for any defalcation or fraud that may occur in connexion with it. The Government expect District and Subordinate Judges and District Munsifs so to inspect and test the work of their officers from time to time as to ensure attention to the duty, and to limit opportunities for fraud (G. O. No. 1914, Madras, dated 16th August 1877).

(2) *Cancellation of adhesive Court-fee labels to prevent re-user thereof.*

The Governor-General in Council has recently had under consideration the best method of cancelling adhesive Court-fee labels so that they may not be fraudulently used again.

(a) *Second punching thereof by the Record-keeper.*—Under Act VII of 1870, section 30, court-fee labels are cancelled by punching out the figurehead, but this does not perhaps afford sufficient protection and, pending further consideration of the subject, the Governor-General in Council directs that the record-keeper of every Court shall, when a case is decided and the record consigned to his custody, punch a second hole in each label distinct from the first and note the date of his doing so at the same time. The second punching should not remove so much of the stamp as to render it impossible or difficult to ascertain its value or nature. (G. I. Resolution, 24th July 1873, G. O., Madras, No. 1095, dated 5th August 1873).

The directions in G. I. Resolution, 24th July 1873, apply only to adhesive label used under the Court-Fees Act. Impressed stamps used for denoting court-fees need not be cancelled or punched otherwise than as required by section 30 of the Court-Fees Act. (G. O. No. 2509, dated 20th September 1883.)

The Governor-General in Council observes that, under the provisions of the Court-Fees Act, the cancellation of stamps must be effected by the Court or Office receiving the document to which a stamp has been affixed.

(b) *Labels affixed to certified copies, certificates, etc., should be cancelled before issue.*—His Excellency in Council is not



and for what purpose, it has been delivered, and on its return, to examine it and ascertain if it be in the same condition in which it was issued from his office, and, if it be not in the same condition, to bring the circumstance to notice. (*H. C. Circ. No. 2131, dated 13th October 1881.*)

(4) *Stamps affixed to documents to be punched before any action is taken.*—Standing Orders Nos. 86 and 88 in Section V of the Stamp Manual will be amended as shown in the Annexure to this order. The Board of Revenue is requested to incorporate the provisions of Chapter VII, Section V of the Stamp Manual as now amended in the place of note (3) to paragraph 6 of its Standing Order No. 172.

His Excellency, the Governor in Council, desires to draw the attention of officers in all departments to the provisions of these Standing Orders. It should specially be noted that, as laid down in Standing Order No. 88, it is the duty of every officer before whom a document bearing an adhesive stamp label is produced, to see that it has been properly punched and cancelled before any action is taken on it. The rule laying down that every clerk who submits for orders a document bearing an adhesive stamp, shall be responsible for seeing that it has been duly punched, should be strictly enforced. There is reason to believe that serious loss of revenue is caused by the improper use a second time of adhesive stamps, which have not been duly cancelled on first presentation. (*G. O. No. 2109, Revenue, dated 22nd June 1910.*)

#### *Annexure.*

*Standing Order No. 86 (now No. 83).*—“Every officer presiding over a Court or Office and receiving a document liable to stamp duty under the Court-Fees Act and stamped with adhesive stamps should, after satisfying himself that the document is properly stamped, see that a date stamp is applied to it in such a manner as to cover or touch some part of the stamps, but not in such a way as to obliterate the entries thereon or to render the detection of forgeries more difficult. The stamp should then be cancelled by punching out the figurehead. The punch used for this purpose should be large enough completely to remove the figurehead.

(5) *Documents insufficiently stamped to be returned without being punched.*—If the document is insufficiently stamped the date stamp should not be applied to the stamps on it, nor should the stamps be cancelled by punching out the figurehead. The document should be returned to the parties concerned for re-submission properly stamped.

[Stamps affixed to documents in excess of legal requirements should be punched. No refund or renewal can be granted where the amount of the excess value is less than one rupee. In cases where the value of excess stamps is not less than one rupee, the party concerned will be allowed refund of their value after deducting one anna in the rupee. He should be given a certificate (Form LXXXVI,

receive back their value less discount within 30 days at a specified treasury and at the same time send an advice in Form No. LXXXVII (now Form No. L) to the treasury officer. The certificate will become null and void after the expiry of the 30 days and refund will not be admissible thereafter.

The presiding officer of the Court will note under his initials the date and number of the certificate on the stamps affixed in excess, so as to prevent fraud. (*H. C. Dis. No. 1320, dated 22nd July 1916.*)

*(II) Reporting cases of infringement of the rules for the sale of stamps.*

All officers presiding over Civil Courts are requested to bring to the notice of the Revenue Divisional Officers cases which may come to their notice of infringement of Rule 15 of S. O. No. 75 at page 291 of the Stamp Manual (Edition 1902) (R. 11 of the rules published at p. 260 of the Stamp Manual 4th edn., read with Standing Order No. 76 published at p. 320) prohibiting a licensed vendor from attempting to supply a stamp higher in value than the highest he is authorized to sell by the sale of a number of impressed sheets of lower value. They are not expected to hold any inquiry as to whether the rule has been actually infringed or not, but merely to give information of the cases to the Revenue Department with particulars such as the serial numbers of the stamps, their value, date of their sale, and name of vendor and purchaser appearing on the stamps themselves. (*H. C. Dis. No. 1096, dated 19th June 1916.*)

For the Standing Orders of the Board of Revenue as regards checks against fraud, see pp. 328-330 of the Madras Stamp Manual 4th edn.

**RULES MADE BY THE HIGH COURT OF LAHORE.**

*Rules made by the High Court under the power conferred by section 30 of the Court-fees Act, VII of 1870, and all other powers in that behalf, regulating the cancellation of court-fee stamps.*

*Rules.*

1. The cancellation of court-fee stamps shall be effected,—

- (a) when a document bearing a court-fee stamp is received by a Court competent to receive the same;
- (b) when a court-fee stamp is paid in on account of process fee;
- (c) when a court-fee stamp is affixed to a document issued by any Court or office;
- (d) when the record of a case in which court-fee stamps have been filed is finally made over to the Record-keeper for safe custody.

2. Court-fee stamps falling under clauses (a) and (b) of the foregoing rule shall be cancelled immediately on receipt of the

the receiving officer shall examine the court-fee stamps in the record and either certify on the index of papers that they are complete, or immediately bring to notice any deficiency, as the case may require.

6. Record-keepers will be held personally responsible that the stamps appertaining to the records under their charge are complete, and that they have been duly cancelled in accordance with these instructions. Should a record be sent into the record-room in which the stamps are incomplete or not duly cancelled, the Record-keeper shall report the circumstance at once to the head of the office, and shall defer entering the case in its appropriate register until orders have been passed in the matter.

7. When a record containing court-fee stamps is taken out of the record-room for any purpose, each official through whose hands it passes must note on the index of papers or on the list of records where such a list is with the record, that he has examined the court-fee stamps in the record, and that they are complete, or, if they are not complete, at once report the fact for orders.

*Note.*—1. To facilitate the examinations required by the above rules a column has been inserted in the index of papers attached to each record which shows at a glance what papers in the record bear court-fee stamps, and the number and value of the stamps attached to each of such papers.

2. These rules do not supersede in any way the instructions contained in paragraph 49 of the Punjab Stamp Manual, Edition of 1913.

3. Paragraph 50 of the Punjab Stamp Manual, Edition of 1913, contains further instructions with regard to fraudulent practices in respect of court-fee labels and is added here for the information of the Courts:

"50. Further precautions against the fraudulent use of court-fee labels a second time were, under the orders of Government, prescribed by the Superintendent of Stamps in his Circular No. 1, dated 24th April 1877, of which the effective portions are extracted below. It is to be noted that at that time adhesive labels alone were used to denote fees of Court :—

"The first and most important point to be guarded against is the re-use of stamps which have once been used; such stamps may have been punched, or they may have been left unpunched, and passed into the record-office and there removed. In the case of a removed stamp that has been punched once, it is clear that its use a second time can only be effected by the dishonesty of the native subordinate who, in the first instance, receives the documents presented by suitors. In the case of a removed stamp that has not been punched, it is possible that it may have been so little injured in the removal as to be used a second time without detection, unless the stamps be

Letter to the Government of Bombay, No. 230, dated the 20th April 1885.

Letter from the Government of Madras, No. 953, dated the 30th September 1887.

*Resolution.*—In supersession of all existing orders on the subject, the Governor-General in Council is pleased to authorize the refund of the value of impressed Court-fee stamps and of Court fee adhesive labels in accordance with the following rules :—

1. (a) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or
- (b) When any person is possessed of two or more (or, in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person *delivering up the same to be cancelled* and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered. Provided that Local Governments [*the Board of Revenue—Madras Notification*] may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. The Local Governments may, at their discretion, delegate this power to any subordinate authority [*The last sentence omitted in Madras Notification.*]
2. When a licensed vendor surrenders his licence or dies, the Collector may, at his direction, if he considers that the circumstances justify the application, repay to him or his representatives, as the case may be, the values of stamps and labels, not spoiled or rendered unfit for use, returned into the Collector's store, deducting one anna in the rupee; or he may issue stamps and labels of other values in exchange, provided that, in the case of adhesive Court-fees labels, their value may not be refunded, nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is not less than Rs. 5, there are at least two such labels which have never been detached from each other; and in cases where the value of each label is less than Rs. 5 unless there are at least four such labels which have never been detached from each other.

2. Stamps affixed to documents in excess of legal requirements should be punched and treated as spoiled stamps for purposes of refund when their value is not less than one rupee. The stamps themselves should not be returned but the party concerned will be given a certificate (Form No. L first portion) to the effect that he is entitled to receive back their value less discount within ninety days at a specified treasury. An advice (Form No. L second portion) should, at the same time, be sent to the officer in charge of the treasury. The certificate will become null and void after the expiry of the ninety days and refund will not be admissible thereafter. The renewal of the certificate or the issue of a fresh or duplicate one on any ground whatever is prohibited. (Boards' Proceedings No. 158/567-R., Mis., 27th April 1916. Board's Proceedings No. 10/408-R., Mis., 25th March 1919.)

97. (a) When any person is possessed of impressed Court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or

(b) When any person is possessed of two or more (or, in the case of denominations below Rs. 5, four or more) Court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use;

the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless within the period of six months preceding the date on which they are so delivered. Provided that the Board of Revenue may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless. Applications in such cases should be submitted for the orders of the Board of Revenue if refund is recommended. In cases of special hardship, however, the Board of Revenue may sanction the refund of the value, or replacement, of detached as well as spoiled Court-fee adhesive labels provided the application is put in within the period prescribed above. (Board's Proceedings No. 434, 9th September 1895. Board's Proceedings No. 206, 3rd March 1888.)

1. In the case of impressed Court-fee stamps, the power vested in the Board has been delegated to Collectors of districts. Board's Proceedings No. 2/461-R., Salt, 6th February 1908.)

2. The word "Collector" occurring in this Standing Order, includes all Divisional Officers, Tahsildars and Deputy Tahsildars in independent charge. (Board's Proceedings No. 132/770-R., Mis., 9th June 1909.)

it with the certificate to Treasury Deputy Collector, who will dispose of the case according to its merits, or, if necessary, take the orders of the Collector. The Deputy Collector will invariably enter, on the memorandum of objections, his decision or opinion on the point and sign it with his usual signature.

- (vi) If satisfied of the correctness of the certificate, the Accountant will write the necessary order for payment on the back of the certificate itself and, after obtaining the signature of the Deputy Collector, will send the certificate to the parties who are entitled to receive such payment by post "Bearing," if they are not present to receive it in person. The Accountant will note the date of delivery or despatch of the certificate in the register kept by him, referred to in paragraph (iii).
- (vii) If any certificates be rejected in consequence of containing errors, they will be returned to the parties who hold or present them with an endorsement under the signature of the Deputy Collector specifying the cause of rejection, unless any circumstance renders it necessary to retain them.
- (viii) When proper parties are not present to receive the rejected certificates, they will at once be sent to them by post bearing and will not be allowed to accumulate among the public records till the parties come for them.
- (ix) On payment being made at the Huzur Treasury, the receipts of the persons to whom the refunds are made will be taken on the back of the certificates, which will then be cancelled and forwarded by the Treasurer daily with his other accounts to the Head Accountant. The same course will be followed in the Taluk Treasuries, and the certificates will be sent to the Huzur with the Tahsildar's monthly accounts in support of the payments entered in them.
- (x) The Head Accountant will, on receipt of the certificates, have their amounts compared with those entered in the several monthly accounts current, and forward the certificates to the Accountant-General along with the monthly Treasury Accounts.

1. When a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it

that the stamps detailed therein and of the value of Rs.                      were destroyed and burnt in his presence. A copy of the certificate of destruction shall be sent to the Accountant-General, Madras, on or before the 6th of every month along with the plus and minus memorandum of stamps.

(3) The necessary entries on account of the above shall be shown in the monthly plus and minus memorandum of stamps sent to the Accountant-General, Madras, and in the stock registers and monthly accounts of the local depot. The discrepancies found between the plus and minus memorandum of stamps and the Treasury accounts shall be reconciled by the Accountant General, Madras, in direct communication with the officers concerned.

1. These applications are exempt from stamp-duty.

2. When applications for the refund of the value of spoiled stamps are rejected in accordance with the rules laid down in the Stamp Manual, the words "refund refused" should be written across each stamp. In the case of stamps for which there is no immediate use (section 54 of the Stamp Act) the endorsement should be so made as not to cancel the value of the stamps and preclude their being used subsequently if the owner so desires.

These instructions apply to Court-fee stamps as well as to Non-judicial stamps. [B. Ps. 52, 24th February 1899; 165/1105-R., Mis., 7th September 1912; 325-R., Mis., 6th March 1915.]

## APPENDIX VII.

### RULES FOR THE RECOVERY OF COURT-FEES IN PAUPER SUITS.

The following are the standing orders of the Board of Revenue on the subject—*Vide* Madras Stamp Manual, 4th edn. pp. 338-340.

**106.** The course to be pursued for the recovery of stamp-duty in pauper suits is as follows:—

On the receipt of a copy of the decree from the Court, which will be communicated to the Collectors of the districts concerned within a month after the passing of judgments, it will be sent to the Tahsildar with instructions to ascertain, in the first instance, whether the party liable is able to pay. If he is able to pay, the Government vakil will apply by petition to the Court, under the Civil Procedure Code, to recover the amount by the attachment and sale of the party's property. The application will contain the particulars required by the Civil Procedure Code as far as they are applicable to the case of execution of a decree as to costs only, and a request for the payment of the costs of the application including vakil's fee. The application may be presented at any time after the passing of the decree, whether the decree-holder has applied for execution or not. (Board's Proceedings No. 127, 31st May 1899.)

**107.** When on enquiry it is found that the prospects of recovering the stamp-duty awarded in pauper suits are slender, or when

111. When a defendant or respondent is not inclined to oppose the application, and when the Collector is of opinion that the application should be opposed, he will employ a vakil and cite witnesses. Such cases will naturally be rare, and the regulation fee for the vakil and other costs incurred may be sanctioned by the Collectors. In cases where the fees and the costs do not exceed the costs awarded by the Court and such costs have been advanced by the vakil himself, the Collector is authorised to permit him to deduct from the costs recovered his fees and the costs incurred by him. The transaction must be shown in the accounts, on receipt of advice from the vakil, in accordance with Articles 19 and 26, the Madras Financial and Account Code. (Board's Proceedings No. 482, 1st September 1892.)

112. When a person is permitted to sue as a pauper, it is not necessary that a vakil should be employed to watch the further proceedings in the case; but should circumstances subsequently come to light, which show that the indulgence granted to the plaintiff or appellant was one to which he was not entitled, the Collector will act in co-operation with the defendant or respondent in the manner directed in paragraph 110 or independently as laid down in paragraph 111. (G. O. No. 2526, J. D., 30th September 1879; Board's Proceedings No. 813, 3rd December 1887.)

113. Quarterly returns in Form XLVIII showing the progress made in the collection of the balance of stamp duty awarded to Government in pauper suits should be submitted by all Collectors to the Board. The returns should be despatched on or before the last day of the month following the quarter. (Board's Proceedings No. 345, 17th November 1898. Board's Proceedings No. 2374, Mis., 29th May 1900. Board's Proceedings No. 2747, Mis., 19th June 1900. Board's Proceedings No. 79, 6th April 1900.)

Collectors should add at the foot of the returns a certificate to the effect that the collections given in the returns agree with the treasury accounts, and should explain differences, if any. (Board's Proceedings No. 144/1711-R. Mis., 14th November 1917.)

## APPENDIX VIII.

### COURT-FEES UNDER CERTAIN ENACTMENTS.

#### A—PRESIDENCY SMALL CAUSE COURTS ACT (ACT XV OF 1882.)

##### CHAPTER X.

##### FEES AND COSTS.

Institution fee.

71. A fee<sup>1</sup> not exceeding—

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

<sup>1</sup> The fee has been raised in Bengal.—See Bengal Act IV of 1922 at p. 636 *supra* a.



in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty-rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3, 5 and 25  
of Court-Fees Act,  
1870, saved.

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-Fees Act, 1870.

\* \* \* \* \*

### THE FOURTH SCHEDULE.

[See section 72.]

#### FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

Section. (1)	Description of the document. (2)	Proper fee. (3)
63 (4)	Suit under the sub-section	... Fifty rupees.
65	Suit under the section	... Fifty rupees.
67 (4)	Suit under the sub-section	... Fifty rupees.
67 (5)	Suit under the sub-section	... Fifty rupees.
70 (2)	Application to court to recover from the funds of the endowment the contribution leviable by the Board or committee.	Two rupees.
73	Suits under the section	... Fifty rupees.
76 (3)	Application to the court by a trustee of a math or temple or any person having interest for modifying or cancelling any order of the Board sanctioning alienation of immovable property under sub-section (1).	The fee leviable on a plaint under article 17, Schedule II of the Madras Court-Fees Amendment Act, 1922.
77 (2)	Application to a court to modify or set aside an order of the Board under sub-section (1) allocating any endowment, property or the income therefrom to religious and secular purposes.	Twenty rupees.
78	Application to the court for delivery of possession of endowments to a trustee appointed by the committee.	Two rupees.
84 (2)	Application to modify or set aside the decision of the Board under sub-section (1).	The fee leviable on a plaint under article 17, Schedule II of the Madras Court-Fees Amendment Act, 1922.

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### Grant of Copies.

**Section 82.** The President of a Board or Committee may grant copies of proceedings or other records of his office on payment of such fees and subject to such conditions as may be determined by the Board.

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1. The Article referred to is Art. 17 and not the new Art. 17-A. See 58 M. L. J. 494 cited at p. 566 *supra*.

Nature of the document.	The stage at or the officer before whom filed or used.	Authority.
6. A petition or application in a proceeding under secs. 105, 105 A, 108 and 108-A of B. T. Act.	Settlement Officer or Assistant S. O.	Sch. II, Art. 1 (b). See 32 C. W. N. 1136 (1928) <i>Gopal v. Gurucharam.</i>
7. A petition or application in a suit under section 106, B. T. Act.	Settlement Officer or Assistant Settlement officer or Civil Court.	Sch. II, Art. 1 (a). If the value is Rs. 50 or upwards Sch. II Art. 1 (b).
8. Application for commutation under sec. 40, B. T. Act.	Settlement Officer or Assistant Settlement Officer.	Sch. II, Art. 1 (b).
9. A suit under sec. 111-A B. T. Act.	Civil Court	... If simply declaratory Sch. II, Art. (iii), but if, with consequential relief Sec. 7 (IV) c, Court-Fees Act.
10. Appeals under Sec. 101-G.	{ Revenue Court Commissioner or Director of Land Records, Bengal.	... Sch. II, Art. 1 (b). Sch. II, Art. 1 (c).
11. Appeals under Section 109-A, against decisions of a Revenue Officer under sections 105 to 108-A both inclusive.	Special Judge	... <i>Ad valorem</i> or Rs. 20 as the case may be.
12. Application for copies.	Revenue Officer. S. O. and Asst S. O.	Sch. II, Art. 1 (a).
13. Certification of copies of final records otherwise than Govt. Rule 62.	Revenue Officer	... Clause (39) of No. 1872 J. dated 23-5-121 Bengal Govt. Calcutta Gazette, Pt. I, pp. 865, 877.

to lay down principles of computation which will bring out results more in accordance with the facts than those embodied in the old Act. I repeat, however that there is no intention to do anything which will directly or indirectly raise the amount of institution-fees payable in suits relating to land.

"This is the main object of the Bill. The Bill contains one or two other minor provisions to which it is not necessary for me to refer at the present stage."

The motion was put and agreed to.

The Hon'ble Mr. Ilbert also introduced the Bill.

## II

### *The Select Committee's Report.*

1. We have divided the Bill into three Parts, of which Part I deals with suits relating to land and Part II with other suits, Part III containing supplemental provisions.

Part I is to be brought into force by notification of the Governor-General in Council, and it is proposed that Part II and the material portion of Part III come into force on the first day of July next.

2. We have excepted from the operation of section 8 (section 4 of the Bill as introduced) the suits to which paragraph ix of section 7 of the Court-fees Act relates. In a suit for foreclosure or sale the principal and interest due under the mortgage-deed represent the value of the suit for purposes of jurisdiction, while the value for the computation of court-fees is the principal only.

3. We have added to the Bill a section in the terms of section 3? of the Punjab Courts Act, 1884, and have proposed to repeal that section of that Act.

4. We have so amended section 11 (section 5 of the Bill as introduced) as to give the appellate Court a discretion as to proceeding with an appeal in a suit which was instituted in a Court without jurisdiction as regards the value, and we have made the provisions of the section applicable to an appellate Court apply also to a Court exercising revisional jurisdiction.

\* \* \* \* \*

5. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

## III

### *Speech on presentation of select committee's report.*

The Hon'ble Mr. Scoble presented the Report of the Select Committee on the Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

The Secretary, with the permission of His Excellency, the President, read the following remarks by the Hon'ble Rana Shankar

(2) *If an appeal is preferred by a plaintiff*, the stamp fee will ordinarily be calculated on the claim or portions of the claim disallowed by the lower Court. If an appeal is preferred by a defendant, the stamp fee will ordinarily be calculated on the amount adjudged by the lower Court, provided that the parties are at liberty to relinquish a portion of their claim on expressing their intention of so doing in the Memorandum of Appeal.

(3) The fee chargeable on appeals from orders under clause (c) of section 244 of the Code of Civil Procedure of 1882 (now Section 47 of the Code of 1908) shall be limited to the amount chargeable under Article 11 of the second schedule to the Court-Fees Act, 1870.

(4) *Valuation in certain classes of suits under the Malabar law.*—As the subject-matter of suits comprised in the classes of suits mentioned in clauses (b) and (c) of paragraph IV of Section 7 of the Court-Fees Act, 1870, *viz.*, suits for the removal of a karnavan or ejaman or for the enforcement of a right as karnavan, ejaman or member of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudari illom, does not admit of being satisfactorily valued, and whereas by an order in Council dated the 24th day of January 1903 and numbered 86, Judicial, His Excellency the Governor of Fort St. George in Council, has sanctioned the following rules for determining the value of the subject-matter of such suits, the High Court. under and by virtue of the authority conferred upon it by section 9 of the Suits Valuation Act, 1887, and all other powers thereunto enabling, hereby directs and orders that for purposes of the Court Fees Act, 1870 and the Suits Valuation Act, 1887 the value of the subject-matter of all such suits and appeals in such suits, instituted or presented on or after the 1st day of March 1903, shall be determined according to the following rules:—

(i) The subject-matter of a suit for the removal of a karnavan or ejaman or for the enforcement of a person's right as karnavan or ejaman of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudari illom, shall, for purposes of the Court-Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at one-third of the amount at which the same would be valued under the provisions of the Court-Fees Act, 1870, if the suit were one brought by a stranger for the recovery of the whole property—moveable and immoveable—possessed by the tarwad or illom to which the suit relates.

(ii) The subject-matter of a suit for the enforcement of a person's right as member of a tarwad governed by the Marumakkattayam or Alyasantana system of law or of a Nambudari illom, shall, for purposes of the Court-Fees Act, 1870, and the Suits Valuation Act, 1887, be valued at the amount at which, if the whole of the

(*Note*.—Claims to pensions and grants of money or land revenue are governed by the provisions of the Pensions Act XXIII of 1871).

**Rule 5.**—(1) Agency Munsifs shall have cognizance of suits for moveable or immovable property not exceeding in value Rs. 500 but shall not have cognizance of any suit in which any Zamindar, Bissoyee or any Mansubdar, Muttadar or other feudal hill chief may be concerned :

Provided that the Agent to the Governor or the Government Agent, as the case may be, or Agency Divisional Officer having jurisdiction may transfer any suit in which a hill chief is concerned if both parties desire such transfer or consent thereto and if the value of the suit does not exceed Rs. 500 to the Agency Munsif within whose local jurisdiction the cause of action has arisen for disposal by him :

Provided also that the Agent to the Governor or the Government Agent, as the case may be, with the sanction of Government may authorise, any Agency Munsif by name to take cognizance of suits up to any amount not exceeding Rs. 3,000 in value.

(2) Suits cognizable by an Agency Munsif shall be instituted only in the Court of the Agency Munsif having jurisdiction.

**Rule 6.**—With the exception firstly of suits which are cognizable by Agency Munsifs and secondly of the suits described in rule 7, all suits shall be instituted in the Court of the Agency Divisional Officer having jurisdiction.

**Rule 7.**—Suits of a value exceeding Rs. 5,000 or for revenue paying land of which the value of the annual produce exceeds Rs. 500 shall be instituted in the Court of the Agent to the Governor, or the Government Agent as the case may be.

### B—LAHORE.

#### MANNER OF DETERMINING THE VALUE OF SUITS FOR PURPOSES OF JURISDICTION.

(*Section 9, Suits Valuation Act, 1887.*)

Rules made by the High Court, with the previous sanction of the Local Government under the powers conferred by section 9 of the Suits Valuation Act, VII of 1887, and all other powers in that behalf, for determining the value of the subject-matter of certain classes of suits, for the purposes of jurisdiction, which do not admit of being satisfactorily valued, and for the treatment of such classes of suits, as if their subject-matter were of the value as hereinafter stated.

#### RULES.

1. (i) Suits in which the plaintiff in the plaint asks for a decree against the other party to the alleged marriage, either alone, or with other defendants, for restitution of conjugal rights ;

- (ii) In other cases—the market value, at the date of institution of the suit, of the property alienated; subject in either case to the provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

3. Suits in which the plaintiff in the plaint asks for accounts only; not being suits to recover the amount which may be found due to the plaintiff on taking unsettled accounts between him and the defendant, or suits of either of the kinds described in Order XX, Rule 13, of the Code of Civil Procedure,—

*Value*—(a) For the purposes of the Court-fees Act, 1870,—as determined by that Act.

- (b) For the purposes of the Suits Valuation Act, 1887, and the Punjab Courts Act, 1918 (as amended)—Such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint.

4. Suits in which the plaintiff in the plaint seeks to establish or to negative any right hereinafter mentioned, with or without an injunction, and with or without damages, namely;—a right of way; a right to open or maintain or close a door or a window, or a drain, or a water shoot (parнала); a right to or in a water course or to the use of water; a right to build, or raise or alter or demolish a wall; or to use an alleged party-wall or joint staircase—

*Value*—(a) For the purposes of the Court-fees Act, 1870,—as determined by that Act.

- (b) For the purposes of the Suits Valuation Act 1887, and the Punjab Courts Act, 1918 (as amended),—

(i) if damages are not claimed,—such amount exceeding Rs. 100, and not exceeding Rs. 500, as the plaintiff may state in the plaint;

(ii) if damages are claimed,—the amount of such damages increased by Rs. 100.

5. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications registered as suits under the provisions of Schedule II, paragraphs 17 and 18, of the Code of Civil Procedure (to file an agreement to refer to arbitration), or of Schedule

forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently,—thirty times the revenue so payable.

*Explanation to clause (b)*—Where the land is a fractional share or a portion of part of an estate, and the land revenue payable for such part is recorded in the Collector's register, and such revenue is not permanently settled, the value for purpose of jurisdiction, shall be held to be thirty times such portion of the revenue recorded in respect of that part as may be receivably payable in respect of the share or portion.

*Illustrations*—(1) In a suit for possession of a one-third share of the entire holding of 10 ghumaos forming part of an estate and recorded as paying Rs. 20 annual revenue, the value of the land for the purposes of jurisdiction is one-third of thirty times Rs. 20, or Rs. 600.

(2) In a suit for possession of 1 ghumao out of the same holding, the value of the land is one-tenth of thirty times Rs. 20, or Rs. 60.

(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, and net profits have arisen from the land during the year next before the date of presenting the plaint,—fifteen times such net profits. But where no such net profits have arisen therefrom,—the market-value.

(d) Where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and does not come under clauses (a), (b) or (c) of this rule,—the market value of the land.

(e) Where the subject-matter is a garden,—the market value of the garden.

2. In suits to enforce right of pre-emption in land the value of the land, for the purposes of jurisdiction, shall be calculated by the preceding rules.

3. When the land or interest in suit falls partly under one and partly under another of the classes enumerated in rule 1, the value of the land in each class shall be separately calculated.



the value has been determined by the rules made under section 3, the amount at which the relief sought in the suit is valued for purposes of jurisdiction shall not exceed the value of the land or interest as determined by those rules. The suits falling under section 7, paragraph iv, of the Court-fees Act, are certain suits in regard to which the plaintiff is required to state the amount at which he values the relief sought in the plaint. Where the value so stated exceeds the value of the land or interest therein as fixed by the rules, the latter and not the former must be regarded as the value for purposes of jurisdiction. The suits specified in Schedule II, article 17, of the Court-fees Act, are those for which it is difficult to fix a correct valuation, and a fixed court-fee of Rs. 10 is accordingly levied in these cases. Where any such case relates to land or any interest in land the value for purposes of jurisdiction, will be the value of the land or interest as fixed by the rules.

5. The suits falling under the Court-fees Act, section 7, paragraphs i, ii, iii, vii, viii, ix, x (a) (b), (c), and xi (a) to (f) inclusive, are, with one or two exceptions, either such as are subject to an *ad valorem* court-fee, in regard to which the value for the purposes of computing the court fee and the value for the purpose of determining jurisdiction are, under section 8 of the Suits Valuation Act, 1887, the same; or suits dealt with by directions made by the High Court under section 9 of the Act.

6. In order to guard against mistakes as to the value of suit for purposes of jurisdiction and of court-fees, respectively, every plaint ought upon its face to show the value for purposes of jurisdiction as well as the value for the purpose of computing court fees. The former information is requisite in order that the Court may determine whether the plaint should be returned under Order VII, Rule 10, of the Code of Civil Procedure. When a plaint omits to disclose the value of the suit for the purposes of jurisdiction, the person presenting it should be questioned, and his answer recorded on the plaint, unless he consents to amend it then and there.

7. As special care is necessary with respect to cases falling under the provisions of section 7, paragraph iv, and schedule II, article 17, of the Court-fees Act, in valuing suits for the purposes of jurisdiction and of court-fees, a schedule showing the value in each class of these cases has been prepared to guide the Courts in fixing the value in particular cases, and the opportunity has been taken to pre-

## THE COURT-FEES ACT

[APP. 1]

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY.

OF THE COURTS, RESPECTIVELY.					
1	2	3	4	5	
Value of suits for the purpose of computing Court-fees under the Court-fees Act, 1870.					
Court-fees Act.	Nature of suit.	Value for court-fee purposes.	Suits Valuation Act and Rules.	Value for the purpose of determining the jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.	
Section 7, paragraph i.	In suits for money.			Value for purposes of jurisdiction.	
Section 7, paragraph ii.	In suits for maintenance and annuities or other sums payable periodically.	<i>Ad valorem</i> , according to the amount claimed.	Section 8.	The same as in column 3.	
Section 7, paragraph iii.	In suits for moveable property other than money where the subject-matter has a value.	<i>Ad valorem</i> , on ten times the amount claimed to be payable for one year.	"	"	
Section 7, paragraph iv.	In suits— (a) for moveable property where the subject-matter has no market value.	According to such value at the date of presenting the plaint.	"	"	
		<i>Ad valorem</i> , according to the amount at which the relief sought is valued in the plaint or memorandum of appeal; such value must be stated.	(a)	(a) The value of the relief sought as stated in the plaint.	

## THE COURT-FEES ACT

[APP. X

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY—*Contd.*

1	2	4	5
	Value of suits for the purpose of computing Court-fee under the Court-fee Act, 1870.		
Court-fees Act.	Nature of suit.	Value for court-fee purposes.	Value for the purpose of determining the jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.
		Suits Valuation Act and Rules.	Value for purposes of jurisdiction.
			revenue assessed on such land.
Section 7, paragraph v.— <i>Contd.</i>	or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue; and such revenue is permanently settled.		
	(b) When the land forms an entire estate, or a definite share of an estate paying annual revenue to Government or forms part of such estate and is recorded as aforesaid, and such revenue is settled but not permanently:	<i>Ad valorem</i> , on ten times the revenue payable.	(b) If the revenue is not permanently settled—thirty times the revenue assessed on such land.
	(c) Where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed	<i>Ad valorem</i> , on fifteen times the net profits.	(c) Fifteen times the net profits.
		Rule I (c) and rules 3 and 6 of Chapter XI of this volume.	

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY—*Contd.*

1	2	3	4	5
	Value of suits for the purpose of computing Court-fee under the Court-Fees Act, 1870.			
Court-fees Act.	Nature of suit.	Value for court-fee purposes.	Suits Valuation Act and Rules.	Value for purpose of jurisdiction.
Section 7, paragraph vii.	In suits for the interest of an assignee of land revenue.	Fifteen times the net profits as such for the year next before the date of presenting the plaint.	Section 8.	The same as in column 3.
Section 7, paragraph viii.	In suits to set aside an attachment of land or of an interest in land or revenue:	According to the amount for which the land or interest was attached.	Section 8.	The amount for which attached, not exceeding the value of the land and interest.
	Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.	...	Section 3 and rules so far as they apply.	The case of attachment of a house is not provided for, and must be left to judicial decision.
Section 7, paragraph ix.	In suits against a mortgagee for the recovery of the property principal money mortgaged; and in suits by the mortgagor to be secured by.	Accordingly to the principal money exacted.	Section 8 does not apply.	No provision is made, and the value must be left to judicial decision.

SCHEDULE SHOWING THE VALUE OF SUITS FOR PURPOSES OF COMPUTING  
COURT-FEES AND OF DETERMINING THE JURISDICTION  
OF THE COURTS, RESPECTIVELY—*Contd.*

1	2	3	4	5
Value of suits for the purpose of computing court-fee under the Court-fees Act, 1870.		Value for the purpose of determining the jurisdiction of the Court under the Suits Valuation Act, 1887, and the Rules and Directions made thereunder.		Value for purposes of jurisdiction.
Court-fees Act.	Nature of suits.	Value for court-fee purposes.	Suits Valuation Act and Rules.	
Schedule II, Articles 1-13. Schedule II, Article 14.	Miscellaneous applications and Petitions. Petition under Native Marriage Dissolution Act.	As fixed in each case Fixed Value of stamp required Rs. 5.	..... .....	No jurisdiction value necessary. "
	Plaint or memorandum of appeal in each of the following suits :— I. To alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court.	The Court-fees Act lays down a minimum fixed fee of Rs. 10. But in rule 1 of Chapter X of the High Court under powers conferred by section 2 of the Suit, Valuation Act VII of 1887, and with the previous sanction of the Local Government has directed that suits of the nature described under	A to land—section 4 and section 3 and rules. Other suits—and provided for. " " "	As in column 4. " "
Schedule II, Article 17.	II. To alter or cancel any entry in a register of the names of proprietors of revenue paying estates. III. To obtain a declaratory decree where no consequential relief is prayed.		" "	"

C—RULES FRAMED BY THE JUDICIAL COMMISSIONER'S COURT  
AT NAGPUR.

*(Judicial Commissioner's Civil Circular, Part II-8, Page 15.)*

VALUATION OF SUITS.

1. Under Section 9 of the Suits Valuation Act, 1887, and under the same section of the said Act as applied to Berar, the Judicial Commissioner with the previous permission of the Chief Commissioner directs that suits of the following classes shall for the purposes of the Court Fees Act, 1870, the Suits Valuation Act, 1887, the Central Provinces Courts Act, 1904, and the Berar Courts Law 1905, be treated as if the subject-matter of such suits were of the value of Rs. 400:—

- (1) Suits for the restitution of conjugal rights, for declaration of the validity of marriage, or for a divorce.
- (2) Suits for the custody or guardianship of a minor.
- (3) Suits for a declaration that an adoption is valid or invalid.

Provided that if a suit for declaration that an adoption is valid or invalid affects a title to property, then the value of that property, if it exceeds Rs 400, shall be deemed to be the value of the subject-matter of the suit.

2. In exercise of the powers conferred by Section 3 of the Suits Valuation Act, VII of 1887, as applied to the Hyderabad Assigned District and with previous sanction of the Governor-General in Council, the Resident is pleased to make the following rules for determining the value of land for the purpose of jurisdiction.

I. In suits for the possession of land (mentioned in Section 7, paragraph V, of the Court Fees Act, VII of 1870) the value of the land for the purpose of jurisdiction shall be deemed to be as follows:—

- (1) When the land is held on settlement for a period not exceeding 30 years and pays the full assessment to the Government a sum equal to ten (twelve and half by amendment No. 19, dated 19-7-1924) times the survey assessment.
- (2) When the land is held on permanent settlement for any period exceeding 30 years and pays the full assessment to the Government a sum equal to twenty times the survey assessment.
- (3) When the whole or any part of the annual survey assessment is remitted, a sum computed under paragraph (1) or paragraph (2) of this rule, as the case may be, in addition to twenty times the assessment or the portion of assessment so remitted.
- (4) In other cases, the market value of the land.

part of such estate and is recorded as aforesaid and such revenue is settled, but not permanently  $12\frac{1}{2}$  times the revenue so payable.

8. In all cases in which pleaders' fees are to be calculated upon a value other than the value as determined for the computation of Court Fees a note to this effect should be made at the end of the judgment. In the absence of such note all Muharrirs attached to Civil Courts who are entrusted with the drawing up of decrees are strictly prohibited from calculating pleaders' fee otherwise than on the value as determined for the computation of Court-fees.

In suits by a mortgagee, to foreclose the mortgage, no note need be recorded. The pleaders' fee should be calculated in the plaint as due under the mortgage.

#### D—RULES FRAMED BY THE OUDH CHIEF COURT.

In supersession of notification No. 779, dated June 18, 1889, the Chief Court with the previous sanction of the Government, hereby under Section 9 of the Suits Valuation Act, directs that the following classes of suits shall be treated for the purpose of the Court Fees Act, 1870, and of the Suits Valuation Act, 1837, as if their subject-matter were of the value hereinafter stated :—

1. (i) Suits in which the plaintiff sues the other party to an alleged marriage, either alone or with other defendants, for restitution of conjugal rights ... value Rs 100.
- (ii) Similar suits to establish, annul, or dissolve a marriage ... value Rs 200.
- (iii) Suits to establish a right to the custody or guardianship (including guardianship for the purpose of marriage) of a minor ... value Rs. 200.
- (iv) Suits to establish or annul an adoption or appointment by customary right of an heir ... value Rs 400.

#### Value.

- (a) for the purpose of the Court Fees Act,
  - suits of class (i), Rs. 100.
  - suits of classes (ii) and (iii), Rs. 200.
  - suits of class (iv), Rs 400.

(b) For the purpose of the Suits Valuation Act, 1887, such sum exceeding Rs 500 and not exceeding Rs, 2,000 as the plaintiff shall specify in the plaint.

#### Explanation.

- (1) Classes (i) and (ii) do not include petitions under any special Act relating to the dissolution of marriage.
- (2) Class (iii) does not include proceedings under the Guardians and Wards Act (VIII of 1890).

- (1) if damages are not claimed, such amount exceeding Rs. 100 and not exceeding Rs. 500, as the plaintiff may state in the plaint,
- (2) if damages are claimed, the amount of such damages increased by Rs. 100.

V. Suits in which the plaintiff in the plaint seeks to set aside an award, and applications to file in Court an agreement to refer to arbitration or an award in a matter referred to arbitration without the intervention of a Court under paragraphs 17 and 20 of the Second Schedule of the Code of Civil Procedure, when or in so far as the award or the agreement relates to property :

*Value.*

- (a) For the purposes of the Court Fees Act, 1870, as determined by that Act.
- (b) For the purposes of the Suits Valuation Act, 1887, the market value of the property in dispute, subject to the Provisions of Part I of the Suits Valuation Act, 1887, and of the rules in force under the said part, so far as those provisions are applicable.

VI. The foregoing rules are subject to the following explanation :—

Subject to Rule III, a suit falling within any of the above descriptions shall not be deemed to be excluded therefrom merely by reason of the plaint seeking other relief in addition to that described in any of the foregoing rules.

*Value of Suits* :—In cases where the rules made by the Chief Court under section 9, Act VII of 1887 (see the preceding rule), modify the provisions of the Court Fees Act, VII of 1870, the former must be followed. Those cases are given below :—

**Oudh Rules.**

- (i) For establishing, annulling, or dissolving a marriage, Rs. 200—Rs. 15.
- (ii) For custody or guardianship of a minor, Rs. 200—Rs. 15.
- (iii) For annulling an adoption Rs. 400—Rs. 30.

**Court Fees Act.**

- Schedule II, Art. 17, vi. Where it is not possible to estimate at a money-value the subject-matter in dispute, Rs. 10.
- As above Rs. 10.
- Schedule II, Art. 17, v. To set aside an adoption, Rs. 10.



Appeals from decrees of District Courts. **13.** Regular or special appeals, shall when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appellate jurisdiction of District Court. Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law lie to the District Court except when the amount or value of the subject-matter of the suit exceeds rupees five thousand, in which case the appeal shall lie to the High Court.

Appellate jurisdiction of Subordinate Judge. Provided that where a Subordinate Judge's Court is established in any District in a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Subordinate Judge be preferred in the Court of the latter.

Disposal of appeal by District Judge. Provided that the District Judge may remove to his own Court, from time to time appeals so preferred and dispose of them himself, or may subject to the orders of the High Court refer any appeals from the decrees and orders of the District Munsifs, preferred in the District Court to any Subordinate Judge within the District.

Valuating suits for immoveable property. **14.** When the subject-matter of a suit or proceedings is land, a house or a garden, its value shall for the purposes of the jurisdiction conferred by this Act be fixed in a manner provided by the Court Fees-Act, 1870, section 7, clause 5.

It has been held that S. 8 of the Suits Valuation Act takes effect against this section in cases to which the former applies. See *Official Receiver of Kamnad v. Arunachalam Chettiar*, 65 M. L. J. 420 cited at p. 622. As to applicability of section in cases falling under Art. 17 or Art. 17-A, see *Veeramma v. Butchayya*, 50 Mad. 646 and *Arunanga Mudaliar v. Venkatachala Pillai*, 56 Mad. 716 cited at pp. 557 and 601. The latter decision has also been followed in an unreported case C.M.A. No. 8 of 1934 decided on 11-9-1935 (69 M. L. J. Notes of recent cases, p. 24.)

*[High Court notification, dated 23rd July 1926, published at page 1041, Part II of the Fort St. George Gazette, dated 3rd August 1926, as amended by the corrigendum, dated 29th August 1926 published at page 1196, Part II of the Fort St. George Gaz tt., dated 7th September 1926, Dis. No. 1496/26.]*

29. (1) The High Court may, by general or special order, authorise any Subordinate Judge to take cognizance of, or any District Judge, to transfer to any Subordinate Judge under his control any proceedings under the Indian Succession Act, 1925, which cannot be disposed by District Delegates.

Exercise by Subordinate Judge of jurisdiction of District Judge in certain proceedings.

(2) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.

(3) Notwithstanding anything contained in section 13, proceedings taken cognizance of by or transferred to a Subordinate Judge under the provisions of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by the District Judge :

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## APPENDIX XII.

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### THE MADRAS CITY CIVIL COURTS ACT

(ACT VII OF 1892)

\* \* \* \* \*

3. The Local Government may, by notification in the official Gazette, establish a Court to be called the Madras City Civil Court with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding two thousand five hundred rupees in value and arising within the City of Madras, except suits or proceedings which are cognizable.

Constitution of the city Court.

**13.** Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled, or any evidence recorded half the amount of institution fees paid by the plaintiff shall be repaid to him by the Court.

**14.** When under section 13 of the Letters Patent for the High Court, dated the twenty-eighth day of December, 1865, or under section 25 of the Code of Civil Procedure (XIV of 1882) the High Court has removed for trial by itself any suit from the City Court, fees on the scale for the time being in force in the High Court as a Court of ordinary original jurisdiction shall be payable in that Court in respect of the suit and proceedings therein.

Provided that, in the levy of any such fees which, according to the practice of the Court are credited to the Government, credit shall be given to the plaintiff in the suit for any fee which in the City Civil Court he has already paid under the Court-fees Act, 1870 (VII of 1870) on the plaint.

**15.** (1) The Court authorised to hear appeals from the City Court shall be the High Court.

(2) The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for an appeal from a decree or order of the High Court in the exercise of its original jurisdiction.

**16.** Nothing in this Act contained shall affect the original civil jurisdiction of the High Court.

Provided that :—

thousand rupees may at the election of the plaintiff be instituted in the Madras City Civil Court which shall have jurisdiction to try and dispose of such suits according to the provisions of the Madras City Civil Court Act, 1892 (VII of 1892).

3. (1) Notwithstanding anything contained in the Presidency Small Cause Courts Act 1882 (XV of 1882) and the Madras City Civil Court Act, 1892 (VII of 1892) where an application is made to the High Court of Judicature at Madras under section 39 (1) of the Presidency Small Cause Courts Act, 1882 (XV of 1882) in any suit referred to therein, the High Court may either remove the suits to its own file or transfer the same to the Madras City Civil Court.

(2) Where a suit is ordered to be transferred as aforesaid to the Madras City Civil Court the provisions of sub sections 2, 3 and 4 of section 39 and of section 40 of the Presidency Small Cause Courts Act, 1882 (XV of 1882) shall *mutatis matandis* and subject to the pecuniary limits of the jurisdiction of the Madras City Civil Court apply.

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